REPORT ON THE HUMAN RIGHTS SITUATION IN ARGENTINA

PRESENTED TO THE HUMAN RIGHTS COMMITTEE OF THE UNITED NATIONS

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ON OCCASION OF ITS EXAMINATION

OF THE REPORT SUBMITTED BY THE GOVERNMENT OF ARGENTINA

(Preliminary translation from the original in Spanish)

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COMISION DE FAMILIARES DE VICTIMAS DE LA REPRESION
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I. INTRODUCTION

Ladies and Gentlemen
United Nations Committee on Human Rights

The present document has been endorsed by Human Rights organizations, unions, and social and student organizations for the purpose of informing this Committee of our analysis and observations regarding the Report presented by the Argentine government, in conformity with Article 40 of the International Covenant on Civil and Political Rights.

As the Committee will appreciate, we have opted for a presentation which covers a number of themes associated with the effective realization of Human Rights. Our exposition does not follow the order maintained in the Covenant in the enumeration of the recognized rights nor does it respond, on an item by item basis, to the issues mentioned in the government report. On the contrary, basing our analysis on the terms of the Covenant, our presentation examines a number of issues, which, in our understanding, exemplify a disregard for Human Rights in Argentina.

In order to describe these situations which we feel constitute systematic human rights violations, a number of non-governmental organizations have joined forces to provide a panorama of the Human Rights situation in Argentina today. Each participating organization contributed knowledge particular to its expertise. This common report, therefore, does not reflect homogeneity of ideas, but is the result of an effort to cover the whole spectrum of human rights themes from the specific knowledge of each intervening organization.

The consideration of each area is based on the following fundamental perspectives:

- Actual practice which determines that, in many cases, the law itself is not sufficient to protect human rights;
- Actions and omissions of the Argentine State which demonstrate a spirit contrary to the upholding of Human Rights;
- Views that are contradictory to those presented by the government, in those instances in which we believe the latter to be misleading.

As the Committee will also appreciate, there is a section related to economic, social and cultural rights that are not specifically outlined in the International Covenant. We have

chosen to incorporate these into our report recognizing the indivisibility of all human rights and because, as verified on a daily basis, a lack of social rights automatically leads to the violation of civil and political rights.

We wish to emphasize that neither the Executive nor the Legislative Branch has created organisms to monitor compliance with the International Covenants. Furthermore, the state does not divulge the existence nor its enforcement of the mentioned Covenant. We consider it necessary, therefore, that the Executive Branch make available to the Legislature, on an annual basis, the manner in which it complies with its human rights obligations.

We also wish to draw attention to the Committee's attention to the response of the Argentine government recorded in item 230 of the Report of the Human Rights Committee on its examination of the initial report of Argentina, where it stated that "in conformity with Article 31 of the Constitution, the Covenant has a category inferior to the Constitution, although it is on an equal standing with federal laws, and stands above provincial laws...". Such an affirmation implies a disregard for Argentine ratification of Viena Convention on Rights of Treaties, and that Article 27 of the latter clearly stipulates that no state that is a signatory to a Treaty can justify non-compliance by invoking a conflict with domestic laws. In 1992, the Supreme Court recognized this provision of the Vienna Convention as one of the arguments establishing the full operativeness of the San Jose Human Rights Convention (Ekmedjian case, appeal 7-7-92).

The recent reform to the National Constitution has granted "constitutional hierarchy" to the texts of several International Human Rights treaties. From an institutional and legal perspective, we understand this to be a positive step. But we are also aware that this incorporation will only be effective if a watchful alert is maintained over its compliance. This presentation forms part of what we consider to be our responsibility in that respect.

II. INDIVISIBILITY OF HUMAN RIGHTS

We base our examination of the Argentine situation on the principle that Human Rights are universal, interdependent and indivisible. Thus, the violation of one automatically compromises the full guarantee of the others. In the particular case of Argentina, it is fundamental that there be a recognition of the close and indissoluble relation between democracy, development and Human Rights.

The political-economy and social policies presently implemented in our country are creating a level of unemployment never before experienced (12% unemployment and approximately 10%

under-employment). As a consequence of this economic plan we also cite growing marginalization, and a general deterioration of living conditions, social rights, and public services. The UN Committee on Economic, Social and Cultural Rights recently stated that "...the stabilization programs (...) are causing a violation of economic,social and cultural rights in Argentina."

As in other countries, the applicacion of neo-liberal policies is producing the exclusion of a majority of the population from the full exercise of their rights, and impedes their participation in the productive processes as well as in social and political decision-making. This situation undermines the true meaning of citizenship since a democratic state is not defined only by participation in the electoral process (which in our country is complied with in its terms and dates) but also by the ability of men and women to exercise their fundamental human rights, such as the right to work. When these are denied, the democratic system is weakened.

Furthermore, the state has responded with repressive measures to the natural resistance exercised by the population, in the face of the deterioration of living and working conditions. These policies imply a growing limitation of public liberties: the compulsive eviction of the homeless from occupied buildings, different types of impediments to the freedom of expression through public manifestations and strikes, and the persecution of the young, immigrants, and others as evidenced further on in this report.

Some aspects of the socio-economic situation which must be borne in mind are the following:

- Impoverishment of the population and unemployment persist, despite increases in the Gross National Product;
- Of a total population of 32 million, more than 5 million Argentines have difficulty securing rights to nutrition, housing, health and education;
- 37% of the economically active population suffers from unemployment, underemployment and unstable employment;
- Unemployment benefits cover only 11% of the unemployed; 30.5% of these are under the age of 20 (correlatively, the number of cases opened in the juvenile justice system has grown 135% in recent years);
- The buying power of the median salary (taking as a base 100 in 1984) decreased to 64% in 1994;
- The modifications to the Labor Contract Law promoted by the Executive Branch will imply a disregard of laws 11.544 and 20.744 (regarding limitations of work hours and the right to vacation, respectively) and will provide employers unilateral power in determining the extent and distribution of work hours;
- 70% of the retired and pensioned population receives monthly stipends of 150 pesos, while the minimum amount for family subsistence has been calculated at 900;
- In October of 1993, 13.1% of households - equivalent to more that 5.5 million individuals - received a family income below the official poverty line;
- 15 million individuals (47.5% of the population) suffer from deficient housing conditions; only 37% of homes are equipped with running water and sewage systems.

Work

In this section we will treat violations of the Civil and Political Rights Covenant which relate directly to the question of work rights.

Since the ratification of the Covenant, it has not been observed, on the part of the federal nor of the provincial governments (or any other state office), the submission of legislative proposals that would promote effective protection against cruel, inhuman and degrading treatment which presently takes place in different situations and, in particular, in the social relations associated with the working environment.

It should be emphasized that since the ratification of the Covenant, the Argentine government has systematically declared the illegality of union actions, including those that sought to overcome instances of cruel, inhuman and degrading treatment of workers. Law 23.551 regarding Union Associations (approved after ratification of the Covenant), violates international norms. In 1991, a commission of experts from the ILO Committee for Union Freedom helped to draft a legislative proposal to harmonize Argentine legislation with the principles of union freedom included in the Covenant and in the norms of the International Labor Organization. But the proposed bill was allowed to expire in the Parliament, and there are no other proposals presently being studied.

Article 18 of Law 23.551 states that 75% of union directive and management positions, in addition to the highest office (and its statutory replacement), should be occupied by Argentine citizens. This aspect of the law is discriminatory and creates difficulties for the formation of unions and associations when considering that, in many areas of the country (especially in the border regions), the majority of workers are foreign nationals. This law, therefore, violates Article 22 of the International Covenant.

A number of unions joined efforts to found a new confederation which, in May of 1993 initiated proceedings in the Ministry of Labor to obtain legal status under the name of the Congress of Argentine Workers (CTA). The Labor Ministry (claiming that the proceedings did not comply with Law 23.551 with respect to direct and supplementary affiliation), did not proceed with the inscription, therefore violating Article 22 of the Covenant. Furthermore, since the Argentine government has not ratified all the International Labor Organization conventions related to work inspections, its power to control violations in Argentina is undermined. One can take as an example the case of workers, active in sub-tropical areas, who must endure abhorrent conditions in their transport from the place of contract to the place of employment (Accidents and loss of lives during transportation in clandestine vehicles are frequent.). In regards to immigrant agricultural workers, cholera and other epidemics are on the rise also as a consequence of inhuman working conditions.

In the urban areas, what exists in terms of work inspection legislation does not provide efficient mechanisms for the implementation of regulatory norms on hygiene and safety. Unsafe working conditions are increasing and the non-existence of a

democratically organized disciplinary body is allowing the proliferation of cruel, inhuman and degrading treatment of workers.

With the exception of the public sector, female workers do not have access to effective protection in cases of sexual harassement. In addition, legislation is being proposed which, in the particular case of HIV-infected workers, could translate into cruel, inhuman and degrading treatment.

In the Argentine Republic, innumerable traffic accidents are registered (an average of 26 deaths per day in 1994), and in many cases precarious public transportation conditions are to blame. Even after the ratification of the Covenant, the Argentine Ministry of Labor promoted the practice known as "sale of health". This consists in permitting public transportation workers the right to work during those periods which should be dedicated to rest, and increasing their respective salaries from 50 to 100% above the established pay rate. This policy promotes degrading working conditions and has negative consequences for the psychological and physical health of workers. This policy can be considered one of the leading causes of the high incidence of public transportation accidents.

The Argentine government has been promoting a series of initiatives (some of which are now legislation) which would concretize instances of "labor flexibilization". Since the approval of Labor Law 24013, the rationale adduced is that such measures would promote growth of the labor market. The high rate of unemploment, nevertheless, indicates that this has not been the case. The "labor flexibilization" proposed (particularly for businesses with less than 40 employees), presently being discussed in the House of Representatives, refers to end of year bonus pay, probation periods, modification of job descriptions, special conditions for indemnizations, vacation periods and notice of termination. The Association of Labor Lawyers has severly criticized this proposal alleging that,..."it is a clear transgression of employer responsibility because employees are forced to endure more losses in what regards their legal and remuneration statuses...This proposal would also affect the retraining of those workers victimized by continuous job rotations".

A special mention should be made regarding the retired. Retirement benefits have been drained - in other words, ransacked - by the State which during a number of years (and based on its own discretion), used pension funds to resolve the fiscal deficit. The same State which recently assured that "no bank would fall as a consequence of the Mexican crisis", that "stockholders of Banks in difficulty would be protected", that created a security net for banks, which in the event of financial crisis, would be insured by the National Bank of Argentina, and which assured responsibility for repaying privately acquiredforeign debt when the actual Finance Minister, Dr. Domingo Cavallo, was president of the Central Bank - this same State now refuses to assume its responsibility for this crime committed against those persons who for 30 years or more deposited a percentage of their salaries to secure their retirement.

Presently, the House of Representatives is considering a retirement reform bill submitted by the Finance Minister. Among

the most serious consequences of this bill, we could cite the following: that payment of benefits to the elderly would be based on the availability of existing funds; the National Social Security Administration could limit the availability of these funds in the case of legal suits and related complications, and the rights acquired by the retired and pensioned in the case of funds used by the federal government would not be recognized.

Based on a "necessity and urgency" decree of December 28, 1994, the government froze, for a period of 120 days, payment of legal suits and pending cases (which the Judicial Branch deemed justifiable) brought by the elderly against the state. This is a clear example of a "superposition" of powers, a disregard of judicial authority, and a violation of the right to "due process", as established in Article 14 of the International Covenant.

Upon ratification, by Law 23054, of the American Human Rights Convention, Social Security Tribunals, Lower Courts and Appelate Courts should be established throughout national territory, to replace the present system which requires that appellate claims be filed solely in the city of Buenos Aires. Had the Argentine government adopted this reorganization plan on the date in which it committed itself to the exigencies of the San Jose Covenant (9-5-84), the number of workers now under "irregular" status (40%), and autonomous workers who are administratively impeded from incorporating themselves into the social security system (4 million) would have been considerably reduced.

III. CREDIBILITY AND GOOD FAITH OF THE ARGENTINE GOVERNMENT

With the ratification of Covenants and International Human Rights Treaties, the state accepted a series of obligations in regard not only to the formulation of concrete measures that safeguard Human Rights, but also to the presentation of periodic reports to official organizations for the verification of government compliance. It is a common practice of the present government to submit extensive reports, but, which are, nevertheless, incomplete and untimely (usually submitted at the same time as the oral examinations). This can be seen, for example, in the final observations made by the Human Rights Committe on the Argentine Report of 1990. While commending the government for having presented said report, the Committee expressed, nevertheless, that although "the mentioned provided clear evidence of the implementation of favorable changes since the end of the military dictatorship, the report did not provide sufficient information regarding factors that negatively influenced the implementation of Covenant stipulations" (Human Rights Committee Report, A/45/40, New York, 1990, pg.52, paragraph, 214).

The Committee on the Rights of Children, which was to have examined the Report of Argentina at its seventh period of sessions (between the 26th of September and 14th of October, 1994), previously indicated through its pre-sessional working group that the government report was lacking and requested supplementary information. In September, the Committee decided to postpone the examination period to January of 1995 since, "the supplementary information requested..., which should have been presented in March of 1994, was received immediately prior to the Committee's scheduled examination of the Argentine report".

The same occurred in November of 1994 regarding the examination of the government report by the Committee on Economic, Social, and Cultural Rights. In its final observations, the Committee expressed that "the written report contains important legal information, although it lacks specific information necessary for the determination of whether the government is upholding economic, social and cultural rights." The Committee further expressed that "in light of the fact that the Report and supplementary information presented was inadequate, the government was therefore invited to submit additional detailed information referent to Artciles 9 through 11 of the Covenant. "The Committee emphasized that "the new Report, and all subsequent reports, should be elaborated in conformity with the revised guidelines, and, furthermore, that the former should respond to the themes mentioned in the questionnaire provided to the government by the Committe..."

A similar, if not more serious, government infraction regards the follow-up information provided to the Working Group on Forced Disappearances of the United Nations Center for Human Rights on the ongoing judicial controversy between the government and a group of relatives of victims who disappeared during the military dictatorship (1976-83). These family members are sueing the State for its lack of compliance with its responsibility to provide information on the fate of victims of the forced disappearance policy. This judicial recourse has been the subject of communications from the Working Group to the Commission on Human Rights, as can be verified by publications of said commission (see E/CN.4/1991/20, pp.9/10, and E/CN.4/1994/26, pp. 30/31).

On pages 32-38 of the document E/CN.4/1994/26, there is a transcription of the information and observations received from the Argentine government in regard to the communication from the human rights organizations which alludes to the non-compliance of the Argentine state with its obligations to inform as to the fate of the disappeared, maintain active said investigation, and provide effective legal channels for the actions undertaken by relatives who seek to establish the fate of the victims. The aforementioned documentation from human rights organizations is that referred to in items 102-109 of E/CN.4/1994/26.

The Argentine Government maintains that:

a. The best efforts of the constitutional governments to establish the truth took place in 1984, when it was still possible to find fresh marks of the crimes committed during the period of the military dictatorship. In this regard,it cites the report submitted in 1984 by the National Commission on the Disappearence of Persons (CONADEP), and in particular in the

paragraph in which the Commission states that a "horrfying puzzle had to be recomposed many years after the incidents in question took place, when all traces have been obliterated, all documentation burned and even buildings have been demolished" (pg.32, E/CN.4/1994/26, Spanish edition).

The conclusion suggested by this sentence from the invaluable CONADEP Report is inapplicable in the legal suit presently under way against the Argentine state, inasmuch as it is being clearly shown that extremely important documentation was not known to - or was kept from - the CONADEP Commission. Among that documentation we could cite:

- Acts of numerous meetings of the Military Junta (maximum authority of the military regime) during which the legal status of the disappeared was discussed;

- Microfilms of the complete files of the disappeared maintained by the Ministry of the Interior (files which, in their written form, were destroyed);

- Detailed inventory of military documents, of which the titles, in and of themselves, are proof of the existence of written orders unknown to the CONADEP and Federal Court that tried and condemned members of the Military Junta. During sentencing, the Federal Court maintained (with respect to the policy of forced disappearances) that orders must have been verbally given since written evidence was unknown at the time.

The present suit against the Argentine government is revealing, therefore, that the statement made by the CONADEP Commission regarding the destruction of all documentation was in error, and that this error was induced by those who were preparing the impunity of the crimes committed. The Argentine government is well aware of this error, although, in its communication to the Working Group, the former unequivocally maintains the veracity of the CONADEP and Federal Court conclusions.

b. The Argentine government also maintains that "the other decision which paved the way for impunity was the Due Obedience Law. As a consequence of this law, the universe of possible suspects was reduced to members of the Military Juntas.... The trial of the nine commanders sealed the fate of the argument in favor of punishing all of those responsible. Logic and fact uncovered its irrationality, its real and objective impossibility. This act established the "theoretical and objective impossibility of the initial intent. No one can demand fulfillment of something which, by its nature, is an impossibility".

This statement contains a fallacy and a sophism. The fallacy consists in affirming that the Due Obedience Law limited initial proceedings to the nine members of the Military Junta. The truth is that immediately following the sanctioning of the mentioned law it was not the nine military commanders who were subjected to trial (they had already been tried and condemed in November of 1985),but rather the commanders of Army Corps and the heads of

zones and areas of repression. In synthesis, and as stated by the Due Obedience Law, such obedience could not be invoked by those who had power of decision during the so-called "anti-subversive war." The proceedings against these military officials were not concluded on the basis of the Due Obedience law, as suggested by the Argentine government, but by the presidential pardon of September 29,1989 (sic. the pardon was issued October 6,1989). This is decisive for the present case because the suit filed against the government is founded precisely on the argument that the presidential pardon of those who had the "power of decision" in certain geographic areas, extinguished those legal proceedings which constituted the last possibility of knowing, together with the authorship of the crimes, the fate of those victims disappeared in the different zones commanded by each of the men pardoned.

The sophism follows from the affirmation, previously transcribed, that the trial of the nine commanders sealed the fate of the discourse based on the punishment of all those responsible for the crimes committed, and that no one can demand today the fulfillment of something whose fulfillment is impossible.

The families involved in the present suit against the Argentine State are not demanding the punishment, or the admission of responsibility (already prescribed or excluded by the oficial pardon) of the guilty party ,for the simple reason that theirs is not a criminal suit. What these families are demanding, is the responsibility of the State for retaining or obstructing information that would reveal the fate of victims. Therefore, it is a grave offense on the part of the government to refute the arguments alleged in the suit by attributing to the plaintiffs a purpose totally distinct from that which is clearly established before the Argentine courts.

IV. IMPUNITY

The Report of the Committe on Human Rights [Volume 1, (A/45/40, item 217)] states that "...some members doubt seriously that the Full Stop Law and the Due Obedience Law, as well as the pardons conceded by the President i October of 1989, were compatible with Paragraph 3 of Article 2 and with Paragraph 5 of Article 9 of the International Covenant. Furthermore, in reference to Item 241, the members "are especially concerned about the compatibility of the Due Obedience Law with the Covenant, given the negative precedents this measure could establish." In regards to the above mentioned, we present our position.

One of the fundamental demands of the Human Rights organizations, even prior to the military's self-pardon, has been the trial and punishment of those responsible for the carrying-out of torture, assassinations, disappearances and the kidnapping of children. The Full Stop and Due Obedience Laws, as well as the presidential pardon decrees -which have favored the accused and guilty over the rights of the victims- institutionalized impunity. Nevertheless, the demands of the human rights organizations remain valid.

Impunity violates the fundamental norms of the International Covenant on Civil and Political Rights (Art.2, Inc.1 and 3), in addition to violating:

- The Universal Human Rights Declaration:Arts.7 and 8;
- The Convention Against Torture and Other Cruel, Inhuman, Degrading Treatment or Punishment: Art. 4;
- The Convention for the Prevention of Sanction of Genocidal Acts
- The Convention on the Imprescriptibility of Crimes of War and Crimes Against Humanity;
- The Declaration on the Protection of Persons Against Forced Disappearance; Preamble, Arts. 4,6,14, and 17; and
- The four Geneva Conventions, including Protocols I and II.

The struggle against impunity has three central objectives:

- Punishment of the guilty;
- Establishment of the truth; and
- Protection of society against the repetition of abhorrent crimes

Impossibility of Obtaining Punishment of the Guilty

To the forementioned laws, decrees and other legal means of impunity utilized in our country (although we understand them to be unconstitutional and to violate International Covenants), should be added the utilization of a common law norm - the statute of limitations.

In the beginning of the present constitutional phase (1983), few were the victims of repression whose appeals reached the

justice system. The apparently firm intention of the government to bring the guilty to trial served to delay the initiation of many individual suits, and the trial of the former military commanders had the effect of postponing even further this first phase of judicial action. By the time the impunity laws were approved (1986/87), the statute of limitations had already been invoked for the majortiy of human rights violations committed during the 1975-83 period (5 years in the case of illegal privation of liberty - the figure used for forced disappearences - and 6 years in the case of illegal proceedings). In paragraph 231 of its initial report (CCPR/C45-Add.2), the government stated that "Argentine legislation does not contain impediments to the free investigation of occurrences..." This is not the case. The statute of limitations has been applied to instances of torture and forced disappearances, irrespective of the fact that these have been considered continuous crimes by the United Nations Declaration on Forced Disappearances and the Convention Against Torture, thereby shutting off not only the possibility of judicial proceedings but also that of investigation. In regards to older ongoing cases, judges have acquitted the accused, impeding not only the right to trial, but also the investigative process. Furthermore, as a consequence of Law 23.049, the victims and/or relatives lost their status as plaintiffs and as a consequence were inhibited procedurally from seeking the continuity of investigations.

The assault on the La Tablada barracks also deserves mention as an example of de facto impunity. In this case, reports were filed on the disappearence of three of the perpetrators, on the assassination of two immediately following capture, and cases of torture. The State tried the perpetrators of the assault, who have now served six years in prison. But, accusations were not brought nor investigations initiated, against members of the security forces responsible for the mentioned tortures, disappearances and assassinations.

Establishment of Truth

The CONADEP Report concluded that many of the victims of forced disappearances had been assassinated - a logical and reasonable conclusion which the respective families have received as the only response from the State. Nevertheless, the presentation of information regarding when, how, where and who decided the destiny of these victims is a responsibility the State must fulfill to family members. As stated by the CONADEP Commission (see Nunca Mas, pg.482), "the answers regarding the fate of victims rests on advances made in individual investigations of those responsible for the repressive actions to which we refer."

In 1991, a group of relatives submitted a demand to the Argentine State which required that the same reveal what had been done with and for the disappeared. The government responded that this information had been presented in the military's Final Report of April 28th, 1983. That report stated that all of the disappeared were deceased without offering either proof or any information regarding individual cases.

It is our understanding, furthermore, that society "has the inalienable right to know the truth regarding repressive actions of the past, as well as the circumstances and motives that made possible the commitment of such abhorrent crimes as a means of impeding that these be repeated " (Inter American Human Rights Commission, Report 1985/86). The future of a people cannot be constructed upon ignorance nor on a disregard for its history.

The Argentine State has not nor is it presently enagaged in any action which would favor revelation of the truth. The investigation of cases to which the CONADEP Report makes mention and on which establishment of the truth depends has not been continued. This is so not only in what regards victims of the military dictatorship but also in what regards the victims of the constitutional government.

Non-Repetition of Crimes

A number of revisionist arguments which have found echo in the highest levels of government have focused, in recent years, on relativizing the nature and form of the aberrations committed during the repression. In October, 1994, Captains Antonio Pernias and Juan Carlos Rolon, accused of serious violations of human rights as members of the Navy Mechanics School's Task Forces and later favored with the application of the Due Obedience Law, were called before the Senate Commission on Accords which was considering the request for their promotion which had been submitted by the President. In their testimony they admitted their participation in the repression and acknowledged using "interrogations and torture" as means for obtaining information. They also admitted that Navy forces, "in their totality", had been involved in said acts. "There was no other option other than resigning". As a form of exculpation, the captains further indicated that some of those involved in the "antisubversive war" had since been promoted to admirals.

In two instances in 1994, the President of Argentina vindicated the role of the armed forces by affirming that "we triumphed in a dirty war that brought the country to the brink of dissolution" (As a consequence of this statement, the Permanent Assembly for Human Rights removed President Menem [who had been a member since 1981] from its Board of Directors. Fifteen days later and with unusual rapidity, the Justice system dismissed charges that had been brought against the president for apology for the crimes commited, arguing that the president had not committed an offense by revindicating the Armed Forces, but instead, manifested only " praise and honor" for their action.

The Argentine government, in its Report, attempts to justify impunity by proposing the impossibility of trying all those responsible for the crimes committed. "If all of the thousands of civil servants and penitentiary, municipal, and hospital employees and all the establishments and private citizens involved in the repression were to be tried, uncontrollable chaos would have been unleashed". It would seem, therefore, that the

best manner for guaranteeing impunity is to commit the largest number of human rights violations possible and to involve the greatest number of individuals possible.

The government further mentions what it defines as "the objective limitations of the judicial system...and the mistake of transfering to the penal system the responsibility for resolving conflicts of a political and social nature.... When it came to establishing guilt, political considerations ceded priority to the judicial." Torture, assassinations and forced disappearances should therefore not be brought to justice? Who will judge them? No one?

Impunity, as political discourse and practice, is determining the future of our nation. As proof of this newspapers reveal daily violations, assassinations and torture committed by members of the security forces. Between 1990 and 1994 there were specific denunciations of, 88 incidents of police violence, 83 assassinations (whose victims were between the ages of 6 and 88), and five disappearences (victims between the years of 23 and 67). Of the mentioned victims, 50 were under the age of 21. Of these cases, 22 suits were filed against 66 members of the police force (57 agents, 2 police commissioners, 4 chiefs of police and 3 doctors), 5 members of a police benevolence organization and a renegade group consisting of police agents and civilians. As a consequence,

- 7 police officers were condemned to prison terms ranging from 6 months to 16 years. Two of these are presently free;
- 7 cases involving 39 police officers, 1 police commissioner, 4 chiefs of police, three police doctors, and 5 members of a police benevolence organization are presently pending, some since 1991;
- 12 accused were put in liberty (3 cases were thrown out of court, 1 was dismissed, 1 lacked sufficient evidence, 4 were rejected for lack of merit and 3 acquitted);
- the integrants of the renegade group were acquitted for lack of merit, despite having confessed to their offenses.

It is also a common practice in Argentina today for victims of minor crimes to take justice into their own hands and to respond to theft or robbery, for example, with homocide (in most cases not even self defense could be alleged). In the face of impunity, these "vigilantes" replace the justice system and our society is becoming ever more convinced in its acceptance of their legitimacy. The State, by not trying members of its own institutions, is calling into question what should be its most unquestionable authority: the justice system.

The 1994 Constitutional Convention accorded "constitutional hierarchy", to international human rights covenants but, with respect to impunity, nothing has changed. The World Conference on Human Rights held in Vienna in 1993 stated in its final document, that "governments should repeal legislation which favors the impunity of those responsible for grave violations of Human Rights such as torture, and sanction these violations...consolidating, in this manner, the reign of law."

The implementation of this recommendation would not, however, be retroactive. We therefore recommend that the Argentine government nullify all legislation which generates impunity and

concretize the implementation of the Covenants to which it is a signatory. It should be recalled, in this respect, that the Committee on Human Rights, in its recommendations on the implementation of the International Covenant on Civil and Political Rights (Suggestions and Recommendations - Uruguay - CCPR/79/add.19),... stated that "legislation should be adopted which corrects the effects of the Law of Caducity."

V. THE JUDICIAL BRANCH AND THE AUTONOMY OF JUDGES

Special attention should be given to the considerations of the Argentine government regarding reforms to the Judicial Branch. The present situation of the Judicial Branch is of the uttermost seriousness. We will attempt to show how official policies are interfering with the appropriate functioning of the Argentine court system.

It is government policy to appoint judges aligned with the Executive Authority to key positions in the Judiciary. In the case, for instance, of the increase in the number of Supreme Court Justices, the government persisted in this policy of increasing the number of Supreme Court Judges, despite the general condemnation produced as a consequence. Congress approved this increase through the adoption of Law 23.774, despite
the contrary opinions expressed by organizations representing the legal profession, Human Rights and other non-governmental organizations. It should be remembered that immediately following the approval of the law, politicians of the governing party celebrated their victory by singing the party anthem. The proceedings by which the law was approved were questioned by the opposition and by some in the media who maintained that seats had been filled by mere employees of the mentioned party in order to obtain the required quorum.

The government then designated candidates to the Supreme Court who were sympathetic to its political tendencies (including various ex-functionaries and the present Minister of Justice). The vote to approve the four new Supreme Court Justices was a question of minutes, the nominations having been processed in the Senate in only one day. Similar criteria were also followed to request the resignation of the State prosecutor and to remove the National Prosecutor for Administrative Investigations, despite the offices being, supossedly, life-time appointments. In both cases the occupants were replaced without required Senate approval and with the acquiescence of the New Court. The Administrative Investigations Office was further weakened through the non-designation of four assistant prosecutors to replace others who were also removed from their posts.

The debate regarding the excessive or inappropriate interference of the Executive is not limited to the Supreme Court. The polemic increased as a consequence of decisions on

appointment of members to the Court of Cassation, created during the reform of the penal code. By not yielding to the proposals submitted by the Minister of Justice to name jurists respected by the professional community to the Tribunal, the government generated a political crisis that culminated in his resignation.

Another consequence of the penal reform has been the exceptional increase in the number of criminal courts, as a result of which the government had the opportunity to appoint an extraordinary number of judges. Here again, this faculty was arbitrarily utilized to appoint to the Judicial Branch confidants of the Executive.

The arbitrariness displayed by the government in its designations provoked such a generalized response that, among other consequences, the judicial appointments process was included as an item in the recent constitutional reform. Nonetheless, It should be noted that legal reforms have not proven to be a sufficient basis to limit government discretion. An example is the nullification of the role of the Judiciary Advisory Commission created by Decree 1179-91 (mentioned in the government Report). Another intent to promote "transparency" in the appointment of judges was the modification of Senate regulations to establish that Executive nomminations be debated publicly by assuring access to the media during a minimum of seven days, period in which the public could offer their observations. Nevertheless, in the notorious case of the death of soldier Carrasco, (mentioned in our section on Military Conscription), the Senate hastily filled a vacant judgeship without complying with the required seven day waiting period.

The interference by the Executive Branch in the Judicial sphere has caused a deterioration in the functioning of the court system, which is reflected in public perception of the Judiciary in Argentina. Continuous charges of corruption also contribute to the growing discredit suffered by the Judicial Branch. The publicity generated by several such recent cases culminated in the resignation of a number of officials who preferred leaving their positions to facing impeachment. Accusations made against a federal judge for utilizing sequestered automobiles, and a Buenos Aires trial judge accused of extorting the directors of a well known sanatorium who were involved in a case of significant economic proportions, are among the most recent cases revealed. The case that most stirred public opinion, nevertheless, was that of a federal judge accused by other magistrates of misfeasance, abuse of authority, false testimony, and nonfulfillment of the duties of a public official in relation to the judge's actuation in a drug trafficking case for which the president's sister-in-law and private secretary and other government officials were indicted. In this case the Supreme Court (constituted by judges sympathetic to the government's political orientation), faced with public political pressure, applied an insignificant fine to the accused and fired those judicial employees who had testified against her, charging them with "lack of loyalty." This judge was not impeached due to the application of similar criteria by members of the official party who hold the majority in the House of Deputies.

The results of public opinion polls regarding the state of the judiciary in Argentina should thus come as no surprise. In

May of 1992, the Center for Studies of the Union of the New Majority (a non-governmental organization), made public an opinion poll which indicated that 33,30% of respondents had a negative image of the Supreme Court, while 38.80% believed it to be corrupt. Another opinion poll realized by TEA, indicates that the Judicial is considered more corrupt than the Legislative Branch, although less so than the Executive. Furthermore, respondents to a Gallup poll indicated that the most important cause of corruption is judicial inefficiency and a lack of punishment of the guilty. According to a national poll undertaken by the G. Romer Consulting Firm, only 5% of citizens believe that the justice system is free of political influence. A final poll that deserves mention (conducted by the TEA Agency and the magazine **There Is No Justice**) investigated the opinions of lawyers and judicial employees revealed that 66% of respondents had direct knowledge of acts of corruption. An investigation by Javier Otaegui and Associates (April of 1993) showed that 77.02% of those interviewed for the poll believed the Judiciary is not independent. Finally, a March 1994 Gallup poll showed that judges were trustworthy for only 16% of the Argentine people. In an extensive article published by the British magazine **The Economist** in November,1994, it was noted with astonishment that Argentina is "possibly the only country in the world where the public trust in journalists is greater than the trust in judges."

All of the above is in contradiction to the positive trend cited by the Argentine Government in its Report. But beyond even these differences in the State's perspective on the Judicial Branch, the government report should also be considered somewhat rash in that it exalts a number of legal reforms that, in reality, have never been implemented. The following paragraphs seek to demonstrate this "bad faith" which guides the manner in which the government informs the Committee.

For instance, although the Judiciary Advisory Commission was indeed created during the penal code reform, all the employees and judges presently employed in the criminal justice system were appointeed based on factors other than professional qualification. Many lawyers chosen by the Commision as the "most qualified" candidates were not appointed. At this time, although the Commission formally exists, there is no legitimate access to posts when they become vacant. In addition, the Council on the Magistrate, created by the Constitutional reform and imbued with greater competency in the appointment of judges, has not, to date, been legally regulated. To assure, therefore, that such a reform will result in greater objectivity in the selection of judges is premature, and will not be the case until it is determined how the Commission is to be constituted.

Another unfounded statement made by the government in its Report is that which maintains that the increase in the number of Supreme Court Justices was due to the need to quicken the handling of cases. It is public knowledge that this increase had, as its only objective, the assurance of a Judicial Branch unconditionally responsive to the exigencies of the Executive Branch. The modality adopted by the Supreme Court to examine and resolve cases is the successive analysis of case files by each member of the Tribunal, clearly evidencing the fallaciousness of

the governmental allegation. The only objective in increasing its size was to achieve a Court which would accomodate the desires of the Executive

On the other hand, the penal code reform mentioned by the government proposed the creation of penal enforcement courts, judicial police, and a department for assistance to victims. In what regards courts of enforcement, there are presently three established which attend to those condemned for penal trangressions. The existence of only three courts makes it practically impossible, nevertheless, given the high number of cases, to control the proper implementation of sentences. Having passed almost three years since the reform of the penal code, the Judicial Police has yet to be created. The department for the assistance to victims has also not been effectively implemented.

It can be confirmed that the Executive has "stacked" the courts with sympathetic judges, that the progress alleged by the Argentine State in its Report to the Committee does not exist, and that the improper functioning of the Judicial Branch is confirmed by public opinion as expressed in numerous polls. In this context, what remains to be shown is a series of Executive actions that demonstrate what model of a Judicial Branch fits the actual interests of the government.

In this sense, there is a tendency within the Judicial Branch to abide systematically by the demands of the Executive, including in matters that refer to the violation of basic rights. As an example, we can cite the following case: on April 7, 1994, a civil court judge ordered the eviction of 1,200 persons who resided in the Giol warehouse owned by the Argentine State Railway System. This decision was taken in violation of procedures established in the National Code of Civil and Comercial Processes (Arts.679 to 688). The inhabitants of the warehouse were denied the right to defense, since they were kept unware even of the existence of the suit until October 4,1994, when a convoy of more than 500 police officers raided the establishment in compliance with the judge's demands. In addition, the eviction suit predetermined that occupants were delinquents based on the fact that some of these individuals had been previously processed in police headquarters for seizure of property (A resolution then under appeal and nullified prior to 4-10-94). This constitutes a violation of the principle of innocence since these occupants were considered guilty prior to any judicial condemnation.

In what regards the legal protection of human rights, the present Supreme Court reversed landmark decisions which protected the physical integrity of individuals in the face of police abuse, permitting the admission of confessions obtained under duress. It has also denied a homosexual association the possibility of obtaining legal status, considering its activities to be contrary to natural order and, in general, demonstrated weakness in the defense of procedural guarantees and reversed opinions with respect to de facto legislation.

In another attention raising case, at the end of 1994, and for the second time in its history, the Supreme Court used the "persaltum" recourse in order to leave without effect the excarcelation conceded by a judge to persons who had been held, without trial, for 6 years on the accusation of drug trafficking.

The decision by the lower court was based on a recent law which places a time limit on preventive detention, reglamenting the American Human Rights Convention.

Coinciding with this jurisprudence, which is contrary to the effective protection of individual rights, it is possible to identify a similar tendency in policy. Beyond the Bills remitted by the Executive to the Congress and which are the object of more detailed analysis in other sections, it is important to underscore, for example, the lack of balance between the present public defenders and the prosecutors office. In the Federal District, there are 30 oral tribunals within the ordinary criminal justice system. Each of these courts is assigned a prosecutor who has a staff composed of one career employee, one scribe, and one administrative employee. In comparison, each public defendor is assigned three oral tribunals. A structure of this type signifies a clear violation of the right to defense.

In the same spirit, the Executive Power has tried to undermine the work of attorneys through the implementation of fiscal impositions and the promotion of media campaigns against the profession, characterizing lawyers as being responsible for what the government has defined as the "legal industry". The Executive has deregulated the remuneration of lawyers, which, in practical terms, signifies the payment of insignificant sums for services rendered. Judges have also been known to impose severe sanctions against attorneys who criticize judicial resolutions. Through Executive Decree 1480/92 and Resolutions 983(26-8-93) and 535(15-5-94) of the Ministry of Justice, a system was implemented which concentrates within the Ministry, the faculty to determine requirements and norms of procedures that define the mediation process, in addition to capacitating, as mediators, individuals who are not lawyers. The decisions of mediators are legally binding for the parts, and through these decrees and resolutions the mediation process is taken out of the hands of professionals. This also reflects a further intervention of the Executive Power in the Judicial sphere.

In 1993, Italian judicial functionaries and the respective lawyers involved in a case against 89 members of the Armed Forces (brought by families of Italian individuals who had disappeared in Argentina), obtained authorization through diplomatic channels to receive judicial testimony in Argentina. This request was assigned to Judge Gustavo Literas' court, who set a date for the hearing. However, the hearing was suspended due to the intervention of the Ministry of Justice (and indirectly, the Ministry of Defense) which instructed the district attorney to appeal the resolution. This is another clear example of interference of the Executive Power in Judicial matters and of action contrary to international obligations (i.e., the Universal Declaration of Human Rights, the Convention Against Torture, declarations of the Interamerican Commission on Human Rights, the American Human Rights Convention, and the United Nations Declaration On the Protection of Individuals Against Forced Disappearances).

The Executive Branch, alleging "necessity and urgency", issues decrees to modify laws and constitutional norms, exceeding the limits of its authority as determined by the National Constitution and jeopardizing the division of powers. As an example, Decree 1772/91 "authorizes the temporary cessation of

functioning of national marine vessels for up to two years, giving crews the option of obtaining either leaves of absence without pay, or termination with an indemnization equivalent to 50% of normal pay. This regulation was subsequently prolonged by Decree 2733/93. Commercial companies are the only parties benefitted by these decrees which favor the leasing of Argentine vessels to other countries and which undermine labor contracts in the naval industry.

Particularly polemic have been the decisions made by the present Supreme Court in cases relative to privatization, where the Court has frequently adopted criteria favorable to the interests of the Executive. The privatization of Argentine Airlines is possibly the most illustrative case in which the court, for the first time in its history, took over a case which had only been decided by one lower court judge who had resolved the suspension of the licitation due to irregularities. The Supreme Court intervened with notorious haste to revoke this lower court decision, skipping over procedural instances and disregarding the formal requirements of an appeals recourse.

In another case which aroused public indignation due to the connivence between the Supreme Court and the Executive, the Court was accused, in 1993, of removing a decision which had already been added to a case file in a judgement against the Central Bank and for which the Finance Minister himself, publicly recognized having interceded.

This dangerous official policy toward the Judiciary is also confirmed by the improper use of foreign funds destined for the improvement of the court system. A case in point is the Judicial Training Project financed by AID funds; a program yet to be implemented. The same can be said for a project involving the reform of public defenders' offices, and for the implementation of a nationwide judicial exchange program. The above allows us to affirm that despite the foreign funds received, the reforms announced or proposed for their use have not been implemented.

VI. INTERNAL SECURITY

Since the restoration of the rule of law more than a decade ago, the legislation adopted in this area can seriously endanger individual liberties and rights. The government has consistently demonstrated a tendency to sanction authoritarian security laws as exemplified by the creation, through Decree 1193/94, of the Security Secretariat. This decree has transferred the power to implement "preventive-repressive" security measures (especially in regards to terrorist acts) to a new government department, the Super Secretariat (commonly referred to as the SS), the head of which answers directly to the President of the Nation.

The creation of this official organ is a questionable step given that it entails a significant concentration of power.

The Secretariat brings under its command a great number of security agents and functionaries with a suspiciously high budget. When the government initially promoted the idea of creating this new security structure, it was rejected by all sectors of the community. The Executive, nevertheless, took advantage of a terrible attack against a Jewish organization (which caused more than 100 deaths) as justification for immediately sanctioning the decree. In this case, as in many others, the state utilized a real need for greater security as a basis for sanctioning a decree which unduly limits human rights.

Other instances in which the Armed Forces are empowered to intervene in low-intensity internal disturbances include the following:

- Decree #327/89 which empowers the Armed Forces to repress armed groups which endanger life, property and liberty;

- Decree #329/90 which empowers the Armed Forces to repress "unarmed" individuals who carry-out acts of public disturbance;

- Decree #1273/92 which creates an Intelligence Coordination Department integrated by the federal, border, marine and provincial police, to investigate cases that interfere with "social peace" and a planning and control institution to formulate "strategies to deal with social conflicts."

A particularly worrisome reality is the Executive Branch's Anti-Terrorist Bill submitted to Parliament for approval. This proposal contains very alarming provisions with respect to the human rights of anyone involved in political activities. The most dangerous aspect of this law is its definitional ambiguity regarding what constitutes terrorism. The vagueness of its wording can be used to repress social protests. Furthermore, the proposed Bill increases criminal penalties, in some cases extending them to extreme and unjustifiable terms. Terms of 10 to 25 years are established where arms or explosives are employed with the aim of attacking public security. No damages need to have been inflicted, all that is needed is to establish the dangerousness of the assault. In other words, the full weight of the penalty will be applied irrespective of whether property or individuals were victimized. This prison term is superior to that applied in cases of homocide; in the case of illegal "association", the penalty would also be 10-25 years (the present law applies terms of 5 to 20 years). Instigation to commit this type of crime would carry a term of 5 to 15 years (presently, 2 to 6 years) and public apology of these crimes would also receive 5 to 15 years, although presently, it is only subject to a penalty of 1 month to 1 year.

From a Human Rights perspective, the Defense of Democracy Law (23.077) contains a series of arguable provisions. Among the most objectionable items, the disproportionality of sentences and the lack of judicial review of final sentences should be mentioned. These were the two arguments which led the Organization of American States' Interamerican Commission on Human Rights to find the Argentine state responsible for violating the human rights of Guillermo Maceda, who was condemned in a separate trial for his

participation in the assault on the La Tablada Barracks in January, 1989. The transfer of this case to the jurisdiction of the Interamerican Court, upon recommendations of the Interamerican Commission, prompted a friendly settlement in Maceda's favor.

The same Defense of Democracy Law is again under study by the Interamerican Commission in relation to the general complaint brought by those involved in the La Tablada incident. As was mentioned on the section on impunity, one of the complaints lodged before this international body refers to the lack of official investigations of the human rights violations committed in during the suppression of the attack. What should be noted here is that the length of the sentences established in this Law as well as their lack of judicial revision have also been questioned. In any case, the present national security laws, as well as those projected through reforms, clearly demonstrate that the Argentine state continues to appeal to a concept of internal security that is, by nature, dangerously repressive and violatory of fundamental rights and freedoms.

VII. INSTITUTIONAL VIOLENCE

Police brutality is another instance of Human Rights violations in Argentina. It is engaged in through the frequent application, on the part of security forces, of torture, extrajudicial execution and other forms of violence which are promoted, facilitated, or at least not adequately controlled by the State.

This Human Rights Committe, based on its study of the previous Report submitted by the Argentine government, made specific recommendations regarding "the use of excessive force on the part of the police and the lack of guarantees against the abuse of power by the authorities, with particular attention to the practice of torture". The president of the Committee expressed hopes that these recommendations would be implemented immediately. Nevertheless, the Argentine State has not only not promoted more effective measures of protection and instead approved new laws which further jeopardize the Rights recognized in the Covenant, but, in its present Report it limits itself to referring the Committee to its earlier Report (reference to Arts. 6,7 and 9 of the Covenant in the Report of January 7, 1994).

Opinions are unanimous with respect to the problem of institutional violence in Argentina (we define as "institutional violence" all the arbitrary and illegitimate use of force engaged in or sanctioned by the State). The reports of the Argentine Human Rights organizations (see annex), as well as those of international organizations (Human Rights Watch [section dedicated to Argentina in its report on the status of Human Rights in the World, 1994], Amnesty International [Report on Police Violence in the Provinces of Chaco and Formosa (sic:

should read Corrientes)], Lawyers Committee for Human Rights [section dedicated to Argentina, "Critique"], coincide on the seriousness of the situation, and the lack of response by the Argentine government. In this respect, the report submitted by the U.S. Department of State suggests, among other views, that "the Argentine police continue to be responsible for abuses of Human Rights. Civil and military police have been responsible for a considerable number of extrajudicial assassinations...and police brutality continues to be a serious problem."

The Argentine government, on the other hand, in its Report to the Committee, provides details on reforms to the Criminal Procedures Code presently under way as the only response to the above mentioned complaints. Beyond the fact (as will be shown later) that these legislative reforms do not limit numerous routine illegal practices, the new Criminal Procedures Code itself contains judicial norms that clearly violate Human Rights. In this regard, the following should be underscored:

- Preventive detention continues to be abused, constituting as it does th rule and not the exception. The legal principle of non-excarcelation for certain crimes is maintained and due to the indiscriminate increase in the sentences of the majority of crimes, many are the cases in which prison release is legally prohibited, without consideration even for exceptional cases;

- The time period allocated for preventive detention continues to be excessively long. A law recently sanctioned stipulates that a reasonable detention period during trial is 2 years, with an allowed extension of up to 3.5 years. Although this law reflects an improvement of this situation, since there is now an established time limit, the law also stipulates that individuals can "reasonably" be maintained under detention, without sentencing, for up to 3.5 years (in cases of crimes involving drugs, there is no established time limit);

- It continues to be a common practice to keep prisoners incommunicado during the first few hours of detainment. As will be shown, the government is seeking to prolong this period for up to 5 days. This has serious consequences for cases involving torture, as it becomes difficult to prove involvement in torturous acts after many days of confinement. But notwithstanding these eventual reforms, the present legislation, by maintaining detainees incommunicado in police headquarters, greatly facilitates maltreatment of the arrested. The majority of judges are also reluctant to investigate these issues for fear of jeapordizing their "good relations" with the police precinct;

- The direct application of misdemeanor edicts by the police impedes the necessary judicial control in the handling of cases which can lead to sentences of up to 30 days in prison. In other not so flagrant cases, even a sentence resulting in a fine signifies a police record for the condemned, making social insertion more difficult. The seriousness of these police procedings is that they take place without automatic judicial control.

- Detention for a records-check continues to be an approach utilized by security forces to, arbitrarilly, arrest "enemies" or anyone they deem suspicious. During these arbitrary detentions, not only are individuals subjected to unjustified incarceration (usually under inhumane conditions), but also to mistreatment of various sorts.

In addition to these and other "legal" violations of human rights, it is also important to note the abismal distance which separates the normative regulations themselves and their application by state agents. In this respect, we outline below some of the most grave and frequent types of police abuse:

* the almost systematic use of torture and mistreatment which is facilitated by a legislation insufficient to protect the detained. Among the most common transgressions we can mention "bagging". This involves covering the head of the detained with a specially devised bag which, upon the application of force and abuse, leaves no physical marks (This method, nevertheless, does not protect the detained from brain injuries.). Another abhorrent method is the application of the "dry submarine". In this case, the head of the detained is covered with a plastic bag to induce asfixiation. Both approaches are popular amongst the police because they do not leave physical marks;

* the police continue to detain individuals unjustifiably without regard for the conditions established by law. In addition, there is no administrative control of these detentions, which allows the police to register arrests at their convenience. As a consequence, detention can be officialy recognized hours or days after the fact;

* one of the principal elements of proof continues to be the "spontaneous" declarations made by the detained to the police. These confessions are obtained under physical and psychological duress and usually constitute the main evidence during trial and sentencing;

* although the legal time periods allocated for the completion of trials are already excessively long, not even these limits are complied with and legal processes can be extended indefinitely. While these periods have been reduced as a consequence of the introduction of oral defenses in the Argentine judicial system, this change has only been partial,since some phases of the legal process continue to be conducted through the presentation of documents and other written material which unnecessarily prolongs cases;

* it is important to note the poor physical conditions under which the detained are kept while in custody. The incarcerated are confined in small cells without exposure to natural light and, in some cases, without exposure even to artificial light. In addition, the detained are kept in areas not adapted to those with special needs, such as in the case of the handicapped. Furthermore, the constant and strict police vigilance maintained in areas of incarceration is intimidating to attorneys during consultation with clients;

All of these human rights violations, whether they refer to legal procedures or are the result of illegal police practices, are not recent in Argentina. There is a long tradition in our country of the arbitrary use of force by security personnel. The government has not, in spite of these violations, shown intent to stop or even limit illegal practices. Much to the contrary. A worrisome passivity has charaterized government response, in some cases by ignoring facts and, in others, by outright complicity. The case of Luis Patti is an example of the latter. Patti, a commissioner of police, has been, for a number of years, charged with applying torture, although this has not kept the government from promoting him to other posts.

The response of the government to popular requests for greater security against the abuse of force has been the creation of laws that increase police authority, and a lack of acknowledgement of evidence which reflects the dangers of leaving the power of decision making in the hands of state agents (See in annex, an opinion poll conducted by the Center for Legal and Social Studies regarding views on the police.). Instead of implementing a serious program that considers the necessities of all those involved, and promoting changes that require security forces to adequately comply with the exigencies of a democratic state, the government ratifies laws that leave civil society unprotected.

The most notorious case regarding the above involves the proposed reform of the National Penal Code, initiated by the Ministry of Justice as part of a plan to reorganize the Judicial Branch. Some measures proposed in this Bill constitute, in and of themselves, violations to Human Rights, and others seriously endanger the protection of basic guarantees. Among these, the following are noteworthy:

- Interrogation of suspects is permitted by security forces (art. 10 of the Bill);

- The detained can be maintained incommunicado by the police for up to six hours (Art. 10) and, as previously mentioned, this period can be extended by a judge for up to 5 days (Art. 18). It is also important to note that the detained can be kept from interviewing with a judge during the detention period, violating, in this manner, the right to a speedy trial (Art. 30 eliminates the required 6 hour time limit for appearance of the detained before a judge).

- The exigency that the arrest warrent contain a description of the violation for which the detained is being arrested has been eliminated. It ceases to be a legal requirement, therefore, that the detained be informed of the reason(s) for their arrest; (Art. 29);

These are just some examples of the dangerous changes recently proposed by the Executive. The nature of this Bill clearly indicates a firm tendency to empower security forces without the benefit of greater judicial control.

Finally, it is also important to emphasize that police violence is not limited to any particular region of the country, and that abuse (in its various forms) has been reported nationwide (Even though mores serious situations can be identified, such as the province of Buenos Aires -the most populated area of the country-, Mendoza, and the Chaco). As it is impossible to extend ourselves in further detail here, with respect to the grvity and extension of this situation anb the negligent or complicit behavior of the Argentine State, we refer you to the appendices annexed which relate statistically, and through the presentation of various individual cases, the degree of human rights violations herein described.

Despite the recommendations provided by the Committee on the occasion of its examination of the previous government report, where specific references were made regarding "the excessive use of force on the part of the police, the needed implementation of guarantees to prevent the abuse of power by the authorities (particularly in what regards the practice of torture), and the statement by the President of the Committee on the hope that these issues would be immediately investigated", the Argentine state has not only not effectively promoted the implementation of laws which protect the rights recognized in the International Covenant, but has also limited itself to reiterating to the Committe ,in its present report, the information presented in its previous submission (we make reference to Arts. 6, 7, 9 of the International Covenant and to the government report of January 7,1994).

In early February, 1995, while this Report was in its final phase of completion, the Chamber of Deputies approved a bill to reform the Criminal Procedures Code. Although it is presently impossible, because of time constraints, to present a detailed analysis of all the reforms, it should be noted that this Bill reflects, to a large degree, the reforms proposed by the Executive and which have been questioned in our present Report. That is to say that it is clear to us that the proposed changes to the Criminal Procedures Code reflect an authoritarian tendency in their fundamental dispositions.

We have chosen, therefore, to make reference to only one of the proposed reforms because of the magnitude of its practical consequences. In regards to our previous mention of the tendency to nullify legal procedures, the government reform introduces, as a general rule, that "despite the presence of irregularities, a legal proceeding will not be nullified if it fulfills the purpose for which it was intended". This signifies the "legalization" of the principle that the "ends justify the means". Although this Bill remains to be passed in the Senate, and its application would be left to the discretion of judges, it would come as no surprise that it was interpreted to mean that even in cases where confessions are obtained under duress (as in the case of torture), if the "proceeding fulfills the objective for which it was intended", the confession would be legally recognized as valid.

It should be mentioned that these proposed changes to the Criminal Procedures Code have their origins in pressures made by security forces in their intent to obtain greater power and authority. Recently, a number of judges have disqualified various

police acts alleging that they involved grave irregularities in the obtention of evidence. Nevertheless, these disqualifications have been challenged by members of the legal profession who appealed to the "legal" protection of irregular police behavior. For their part, the Executive and Legislative Branches are permitting the expansion of police authority.

VIII. PENITENTIARY SITUATION

The Argentine penitentiary system has developed historically as an extension of the repressive state apparatus of successive past military dictatorships. These past ten years of constitutional government have not translated into significant changes in the functioning of the prisons.

A preponderant factor behind this lack of change has been that many of the jails continue to be administered by the same genocidal torturers who were employed during the dictatorship. The Argentine prison system is a disgrace to the civilized world, in as much as the most elemental human rights and constitutional guarantees are trangressed therein. In this regard, the state clearly violates international treaties and conventions by subjecting its detainees to cruel and inhuman treatment. It is our obligation, therefore, to refute the affirmations made by the government in its report, and to expose the reality of this system as we see it.

Functioning and Competence of Enforcement Judges

The implementation of this institution has not fulfilled expectations. Among the problems observed are the following:

- only three Enforcement Judges have been designated to attend to thirty-five prisons located nationwide. For those located in the interior of the country, inmates can only be brought before the magistrate once a year;

- access to enforcement judges is mediated by prison authorities. The incarcerated can only be interviewed by an enforcement judge once authorized by prison personnel. Audiences must be solicited in writing and an explantion for the requested meeting must be provided. The possibility for an interview with the competent judge, therefore, depends on the will of the prison director, thus limiting or impeding any form of control;

- enforcement judges have not been known to visit the prisons and familiarize themselves with the quality of conditions under which inmates are held. Although the judges are legally disposed to establish themselves in prison establishments, they are usually located in central offices;

- a lack of independence in the Judicial Branch can also be exemplified in the case of enforcement judges. No reports or legal actions have been brought, by any judge, against the innumerable cases of abuse, torments, and homocide perpetrated by prison personnel. Neither have any administrative actions been initiated by enforcement judges (even in their own jurisdiction) regarding conditions under which prisoners are housed;

- Article 495 stipulates special conditions under which arrest may be deferred, and provides for such "if the prisoner is ill and if incarceration places the life of the detained in danger, as indicated by medical examination." This legal prevision has not been complied with and it has been the object of numerous complaints by relatives and legal representatives of inmanates infected with HIV. A ward has been established for those terminal prisoners infected with HIV in the Muniz Hospital (Penitentiary Unit No. 21). There are innumerable cases, nevertheless, of infected adolescents who have remained in prison without appropriate medical attention and/or sanitary conditions, until their situation becomes so grave that they require transfer to wards for the terminally ill. In Unit 16 of the Federal Penitentiary Service (SPF), 150 young adults are detained, of which 45% are infected with the HIV virus. These inmates, as in the case of the 3500 adults housed in Units 1 and 16, do not receive any type of medical attention or preventive care. In addition, in the majority of cases, infected prisoners are poor and are incarcerated for minor offenses (most without prior records). In all of these cases, Article 495 has not been complied with;

- Detained minors usually fulfill their sentences while they cases are still pending. After their eighteenth birthday, they are kept in high security prisons and subjected to violent treatment. The cases in which full sentences are completed before the age of 21 are rare, meaning that many must withstand three years of incarceration during which maltreatment, overcrowding, cold, hunger, and constant physical punishment are endured.

Enforcement judges do not investigate the condition of incarcerated minors. They allege that even thought he minors are housed in units within their competence, ther fact that they are still without sentences means that they are under the jurisdiction of a trial judge. For their part, the trial judges argue that according to the provisions of Art. 495 of the Procedural Code, when an Enforcement Judge exists, the responsibility for controlling detention conditions and treatemnt is his/her competence.

In sum, savage repression and physical punishment are periodically unleashed against detained minors without the competent judges intervening on their behalf. When they do, it is for the purpose of "becoming familiar with the facts", without demanding the adoption of pertinent measures that guarantee protection of the detained.

In conclusion, the organization of an Enforcement Court has resulted in a worsening of the conditions of inmates in the Argentine prison system. A lack of effective implementation of measures to control and guarantee constitutional rights of

prisoners has created a state of impunity for penitentiary personnel. Enforcement judges have been extremely cautious so as not to incommodate national authorities, contributing through their silence to the abhorrent conditions in Argentine prisons.

Restructuring of the Argentine Penitentiary System (SPF)

There has been a pronounced regression with respect to prison personnel in Argentina since the new Minister of Justice, Dr. Barra, took office. Many members of the SPF, as in the rest of the ARmed and Security Forces, participated in the Task Forces which were responsible, during the dictatorship, for the tortures, violations, kidnappings and assassinations conducted in clandestine detention camps. But, unlike the military and police officers who were forced into retirement or resumed their natural functions, after the return of constitutional government, prison guards continued to carry out the same activities.

In other words, many of those responsible for guarding the clandestine detention camps and torturing the kidnapped, today direct the prisons and they continue to mistreat, abuse, and torture the inmates. Although the original intent of employeeing into the system young, college educated government officials was to "humanize" penitentiaries, this orientation changed drastically after the presidential pardoning of those military who had been condemned, and, most importantly, after the appointment of the new Minister of Justice.

Shamefully, participation in the infamous "Task Forces" or being accused of violations against human rights by national and international organizations now constituted a motive for pride and a guarantee of promotion for those making careers in the correctional system. The SPF was the organization most benefitted by impunity, since none of its members were ever brought to trial.

The Inspector General, Olimpio Garay, was removed as head of the SPF as a consequence of the hunger strike of several inmates who accused him of irregularities and mistreatment of prisoners, and of reports made by human rights organizations. His previous permanence in office, nevertheless, was a clear indication of the existence of a repressive state apparatus that continues intact. Garay was one of the members of the SPF employed in the clandestine camp known as "El Vesubio", active between 1976 and 1978, and located in the province of Buenos Aires. Assistant Major Miguel Angel Pepe and Warden Nicasio Orlando Bordon also worked there. Pepe is today one of the top brass at the Devoto Prison (Unit 2), and Bordon heads the Economic Crimes Jail (Unit 29).

Additional repressors active during the dictatorship and presently employed in the penitentiary system include Assistant Major Juan Carlos Avena (a notorios repressor who was active not only in "El Vesubio", but also in the clandestine camp of "El Olimpo"). Avena is presently Assistant Director of the Caseros Jail (Unit 1). Members of the SPF also participated in other torture centers such as "La Cacha" in Lisandro Olmos, La Plata (Province of Buenos Aires) and the Navy Mechanics School (ESMA). It is not unwarranted to presume that many of these individuals

continue occupying positions just as Pepe, Bordon and Avena. All the penitentiary personnel previously questioned for their participation in the repression have today been promoted in their respective professions. The young, university educated officials alluded to previously in this report, who intended to implement more humanitarian reforms, have all been transferred to the most outlying posts or forced into retirement.

*Building reforms have been almost non-existent. The only official initiatives taken are limited to the construction of a multi-million dollar juvenile detention facility in the province of Buenos Aires. The majority of the prison population remain housed in severe conditions. The inmates - men, women, youth and adolescents - live in extremely overcrowded and miserable conditions. They face hunger and cold and lack attention to their most elementary needs, such as adequate medical care, despite the numerous and sever illnesses endemic to the prison population. It is estimated that approximately 30% of the incarcerated are HIV infected and that their conditions are aggravated by the savage conditions and abandon to which they are subject.

The Caseros and Devoto Prisons (Units #1,2, and 16 of the SPF) are "depositories" that house more than 3,000 detainees. The windows of these jails are not properly maintained, in many instances lacking glass, and the sleeping quarters are not sufficient or are in unusable conditions. The litter is not regularly removed and there is no medical attention (either physical or psychological) provided on a regular basis. Reports are frequent regarding deaths as a consequence of lack of medical assistance and/or corporal punishment.

Neither do prison authorities provide adequate clothing, nourishment, acceptable hygiene conditions, cleaning materials, medication, or reading materials. The buildings in which prisoners are housed are not properly maintained and the majority of sanitary installations are disfunctional.

*This situation is not a consequence of a lack of funds. The yearly budget allocated to the SPF, for the maintenance of 5,000 inmates, is equivalent to 210 million dollars. Administrative corruption and the irresponsible use of funds in a penitentiary system developed in accordance with the needs of the military dictatorship, are just some of the reasons for which the lviing conditions for inmates do not improve despite the enormous investment of funds.

The victims of our penitenciary system come, for the most part, from the lowest and consequently the most unprotected strata of our society. The majority of inmates are illiterate and without access to attorneys to represent them.

*As of 1990, contacts were established between the University of Buenos Aires and the Ministry of Justice for the prupose of up-dating academic requirements for the preparation of future professionals in the penitentiary system. The program, nevertheless, was abandoned by the new Ministry of Justice.

In 1985 a university program involving the University of Buenos Aires and the Federal Penitenciary System was initiated in the Federal Capital. As in the previous case, this project was

also abandoned by the new administration of justice. The University of Buenos Aires contributed, during the first 10 years of constitutional government, as an indispensable ally and supporter in promoting humanitarian reforms in the Argentine penitentiaries. Nevertheless, after the presidential pardon of the military junta, a new orientation was followed, characterized by a generalized conservatism in the penal system and a questioning of the reforms introduced.

The intent to humanize the system and to defend the rights of prisoners began to be perceived by the States as a dangerousi deological deviation. The University of Buenos Aires, instead of being recognized for its high academic standards and for its contributions to the defense of human dignity, was instead accused of "dangerously altering order in the jails." The university professors that lectured daily in the penitentiaries became subject to constant humiliations. Academic activities were restricted and all possible means were used to limit prisoner access to academic preparation. The continuation of the pentitentiary university programs was only assured after hunger strikes, denunciations made by human rights organization and the intervention of sympathetic legislators. Those inmates who initiated academic studies were, in general terms, victimized by receiving the worst conduct reports, and, on occasion, experiencing the most difficulty in obtaining temporary leaves and conditional freedom.

*The goal of social reintegration of prisoners into society is contradicted by the policies of penitentiary personnel. The prison guards, most of whom were trained during the dictatorship, are accustomed to the most absolute impunity and consider terrorizing prisoners the most appropriate method for administrating prisons. For an authoritarian mentality, individuals are prepared to return to society when they are capable of withstanding any sort of humilliation without protest. The object of this approach is to "break" prisoners and to subdue them at any price. Fear of violent reprimands by prison guards is a constant nightmare for the incarcerated. Armed groups of more than 100 guards periodically scan prison facilities submitting detainees to brutal punishments. They destroy personal items and abuse of the vulnerability of prisoners.

Every aspect of the penitentiary system is designed for the purpose of increasing dispair and shame.

-Family members are subject to humilliating circumstances in order to visit relatives. Women are subjected to abuse by prison guards, to shameful body searches, to insults, constant extortions and are threatened with retaliation against the inmates if they make public accusations. All female visitors are subjected to vaginal and anal examinations by prison personnel. Without respect for age or physical health, family members must, in addition to enduring the above mentioned conditions, wait in long lines and bring their relatives food stuffs, clothing and personal items in order to insure their survival.

-The majority of prisoners do not have access to employment in prison work stations. This inactivity is dangerious for their

physical and mental health. Those that are employed are obliged to work under conditions of "semi-servitude". In addition to excessively long work hours, they are remunerated with monthly salaries equivalent to 15 dollars, which, in turn, must be used to pay for their own housing. After years of arduous work under inhuman conditions, prisoners are released to the streets without money, proper documentation, clothing and embittered by the pain and suffering endured during incarceration.

-What is even worse is the indifference of the Judicial Authorities. The judges responsible for the defense of life and human rights remain unaffected by the above described conditions. They are guilty of omission, silence and of neither accusing nor intervening in reprimanding the abuse of power engaged in by prison personnel. Judges do not periodically inspect penitentiaries and, in the same manner in which they rejected the use of Habeas Corpus during the dictatorship, today they ignore the judicial recourses and accusations brought by the detained and their family members.

Annual Report of the Prison Solicitor - 1993/94

The Prison Solicitor, Dr. Eugenio Freixas, has submitted a report which cleary outlines the drastic conditions under which prisoners are housed in federal jails (more than 5,000). Although no mention is made of those incarcerated in provincial jails (approximately 25,000), one can deduce that their condition is as equally poor. This is a situation that requires immediate attention, since approximately 30,000 individuals are presently imprisoned.

In the following paragraphs we will call attention to the most serious information revealed in the Solicitor's report:

*Stress is placed on the exgremely significant consequences of the tremendous degree of overcrowding, a reality attributed to the following elements:

- limited or lack of sufficient space
- excessive duration of legal processes (preventive detention)
- lack of alternative sentences

In response to the above mentioned situation, the Prison Solicitor recommended to the Minister of Justice that public prosecutors be instructed to solicit the freeing of the greatest number of prisoners possible.

* The incapacity of our present social system to generate a system of equal opportunities is noted (page 11) in the Report. "Our prisoners are the clearest manifestation of our incapacity to generate a social model characterized by equality of opportunity". (pg.89)

* The Solicitor received more than 1,400 complaints regarding deficiencies in nourishment, medical attention, transportation of prisoners, physical abuse, unjust reprimands, difficulty in receiving guests and excessive duration of preventive detention. One hundred and eighty three recommendations were made to the appropriate authorities regarding the above, of which 100 were denied and 83 favorably received;

* A proposal was developed to regulate sanctions, including the prohibition of "collective" punishment, guarantee of legal defense and prison releases as determined by an Enforcement Judge;

* The report revealed that the Central Prison Hospital is a mere dispensary, and that to transfer only one prisoner to medical facilities outside prison grounds, he was assigned to the custody of four prison officials at the expense of almost $700,000 in salaries alone;

* Prison medical personnel are given rank and thus are subject to orders and instructions from their superiors (Chief of Inspection, Chief of Security, etc...). As a consequence, treatment may at times be retarded in favor of judicial and administrative requirements. He recommends that doctors be excluded from the penitientiary system hierarchy;

* Five years after the sanctioning of Law 23.737 (referent to use of drugs), no special programs have been implemented for attention to addicts, dental care is not provided on holidays, and the 25% of inmates who are infected with AIDS - 1,200 persons - experience difficulties in receiving appropriate medication;

* In the prison canteen, overpricing of up to 100% has been observed;

* Searches conducted of visitors are an affront. The only metal detector available (introduced to limit the humilliating body searches previously mentioned) is located in Prison Unit 2, unused;

* In many units, there are no adequate areas for private, couple visitations. Furthermore, in the case of those couples that are not legally married, 2 years of previous cohabitation is required as a condition for visitation;

* Pentitentiary personnel are not required to maintain visible identification, thus remaining anonymous;

* Severe punishments and reprimands are imposed for minimal violations and in addition, transfers are often ordered in consequence. Every time such cases have reached the Enforcement Judge, they are invariably revoked;

* Public defendors are daunted by the long waiting periods to which they are subjected and can go months without any contact

with their clients. It is not uncommon for inmates only to meet their lawyers once trial proceedings begin.

* It is recommended in the Report that prisoners be given a copy of the legal documents of their case prior to initiation of oral court proceedings;

* Only two of the three Enforcement Courts due to be created presently function. Furthermore, these are not at the disposal of those prisoners transferred to locations in the interior of the country;

* Education personnel are integrated into the SPF hierarchy and thus are lacking in autonomy. Rather, they should be employees of the public school system. Of 5,300 prisoners, only 230 of the 800 indicated enagage in elementary level studies. Facilities for secondary level studies are only available for independent adult education degrees (without classroom presence) in which there is no teacher-student nor student-student contact. Only 400 students are registered, when there could be potentially 4,000;

* There is only one telephone available for prisoner use (located in Unit 2);

* Remuneration for employed prisoners varies between $0.75 and $1,20/day (for a 7 hour work/day in Unit 2, for example), and payment of salaries can take up to one year. In the Report it is recommended that payment of salaries be timely and that the amounts be comensurate to the stipulated minimum wage. Article 55 of the penitentiary law, which obliges the prison system to make remunerated work available to inmates, has not been complied with for the past 36 years;

* There is a total lack of hygiene and insufficient water and heating. There are broken windows and a shortage of beds and mattresses;

* The long period of preventive detention is not constructively taken advantage of through measures that would result in temporary leaves.

Since the Argentine government did not include the prison Solicitor's Report as part of its submission to the Committee, we are annexing a copy of same to our Report.

IX. DISCRIMINATION

Antisemitism

The impunity which characterizes antisemitic acts as a consequence of government passivity, in addition to the antisemitism promoted by institutions such as the Armed Forces and, to a lesser degree, the Catholic Church, has created a climate in which such acts are tolerated by broad sectors of the population and thus can be perpetrated.

On April 17, 1991, Osvaldo Ercolano, Director of the Center for the Capacitation of Adults #274 (located in the Senate), converted his Civic Education class into a diatribe against Jews. Other complaints were added to this incident, such as the case of the Geopolitics professor, Dr. Broez, who presented an apology for Nazi strategies during World War II. Upon being informed of these two cases, the Director of the National Program for Adult Education (DINEA), seemed only concerned in verifying the names of students who had reported the cases.

On April 28, 1991, 111 graves at the Jewish cemetery of Berazategui were desecrated. Although previous attacks had occurred, this was the first antisemitic act in which suspects were apprehended. The detained, Horacio Carrondi (member of the Army intelligence service until February of 1986), Henrique Kessler (member of the Intelligence Service of the Ministry of the Interior and Secretary of the Police Comissioner of the Province of Buenos Aires), and Carlos Schellnast (former city councilman for the Justicialist Party in Florencio Varela, Buenos Aires Province), the first ever charged under the Anti-discrimination Law 23.592. Nevertheless, despite the numerous arms confiscated in their homes, the accused were freed. In 1993, for the first time since its ratification in 1988, a judge enforced Law 23592. Judge orfeo Maggio sentenced Carlos Schellnast - in another case - to eight months of suspended prison, for having participated in racially discriminatory activities.

In December of 1993, the Head of the Chamber of Deputies, Alberto Pierri, was interviewed by the magazine **La Maga** regarding accusations made by the journalist Roman Lejtman in reference to "Narcogate" - a scandal in which the government was supposedly involved in drug laundering and corruption. The former tried to disqualify the mentioned journalist by referring to him as a "dirty Jew".

Despite international outcry, condemnation by Jewish organizations and the political opposition, media exposure, the only response offered by the Head of the Chamber of Deputies (the third authority in the presidential succession) was that he had innumerable Jewish friends and staff. The government dismissed Pierri's declarations as "a mere verbal exabrupto".

Although three years have passed since the attack against the Israeli Embassy in Buenos Aires, and 7 months since the most horrendous attack against a Jewish organization in Argentine history (the Israeli-Argentine Mutual Association), the government has only manifested its intent to clarify these two cases, without the same being reflected in concrecte actions.

HIV/AIDS

Law 23.798, ratified in 1990, regulates the prevention, capacitation and assistance to those afflicted with AIDS. It penalizes discrimination, prohibits unauthorized HIV blood tests, and penalizes incursion into the private sphere of persons. The Anti-discrimination Law of 1988 protects individuals against discrimination based on race, physical condition, political and sexual orientation, and religious affiliation. Articles 14 and 16 of the National Constitution guarantee equal employment opportunities for all those living in the Argentine territory. In addition, Article 19 protects the right to privacy.

Nevertheless, the problem of AIDS is paradigmatic in as much as the existence of a legal framework of protection for the inflicted does not guarantee "de facto" implementation. present legislation does not appear to go beyond the point of declamation, and there are many cases that exemplify the degree of discrimination in our country today.

Access to equal employment opportunities is not abided by, even though the risk of exposure and contamination in the work place has been considered almost impossible. Law 23.798 establishes that no one can be tested without prior written authorization. Nevertheless, despite the condemnations made by numerous organizations working with the AIDS problematic, there are no laws or regulations that prohibit pre-employment blood tests. The incidence of these tests is frequent in Argentina, in addition to tests conducted of those that are employed, which, in many cases, are used as a basis to terminate employment, as corraborated by Dr. Maglio of the Muniz Hospital (Center for the treatement of AIDS patients).

In August of 1993, in clear violation of Law 23.798, a public school teacher afflicted with the AIDS virus was declared unfit for employment by the Direction of Labor Medicine of the Municipality of Buenos Aires. This case of discrimination was reported by the metropolitan ombudsman, Antonio Cartana, who documented that "AIDS is not an illness which is propagated through social contact, but rather must be transmittedc through blood transfusion and/or sexual activity."

Since 1991, the Argentine army has been undergoing compulsory blood tests of new recruits. According to reports made by conscripts, the results of positive HIV tests are provided in an unprofessional and non-respectable manner, and without the appropriate psychological support established by Law 23.798. In some cases, the victims of such practices reported they were later informed that their test results were negative (Source:Gays for Civil Rights).

In August of 1994, the prosecutor, Jose Maria Villalobos, requested a 15 year prison term for a gay medical student who donated blood without having knowledge of his condition as an asymptomatic HIV carrier. The attorney's discriminatory attitude was founded on the basis that the student had not revealed he was homosexual at the laboratory where he donated blood.

Although over recent decades, legislative advances have contributed to bettering the historically disfavorable status of women in Argentina, in the majority of cases, these have only been a formality. The neo-liberal economic policies implemented by the present government drastically affects the female population, particularly those of lower social-economic strata. Women are today employed as "secondary" or marginalized labor force and utilized by the private sector as a means for cutting costs. The retraction of state services ,such as in the case of health, transportation, education, etc..., has translated into an increase in domestic labor for those women who seek to compensate economically for the lack of state support. This overburden of workplace and household obligations takes a toll in regard to worker leisure, health, development of new skills, political participation and access to other civil and political rights. The cost is also then reflected in women's qualifications when it is time to be "equal" in the labor market.

Poverty and the economic adjustment policies presently implemented directly impact female participation in the labor market. The crisis provokes a growing offer of low-skilled and non-experienced women workers, who look for a job in order to compensate for the extreme shortages faced in their family situations. As in other developing nations, women constitute the majority of the underprivileged population, a phenomenon known as the "feminization of poverty."

In our country, official statistics reflect a panorama which includes the following:

- Women constitute 51.1% of the total population (17 out of 33 million);

- In the late 1980's and early 90's there was an increase in the number of female heads of household (32.1% overall), including both poor and non-poor households. There is a concentration of female heads of household in the Northwest (where they represent 42.8%) and in the Northeast (41.8%). Nonetheless, among the structurally poor, the increase was 44%;

- Of all the female heads of household, more than half constitute marginal labor.

No less discriminatory and serious, due to its social and individual consequences, are the limitations imposed on reproductive rights, as there is no guarantee of access to sure and effective birth control. In 1986, legislation which prohibited the rendering of birth control services was revoked. Nevertheless, in recent years, legislative attempts to propose family planning policies have not been successful, and birth control continues to be culturally and economically unaccessible to the majority of women (particularly the most underprivileged).

The absence of state policy in this respect is closely related to the high number of abortions registered in the country. Argentine legislation stipulates that the interruption

of a pregnancy is a criminal offense. Nevertheless, a number of estimations coincide that there are approximatly 350,000 abortions conducted yearly and, in the majortiy of cases, in unsanitary and unsafe conditions. The mortality rate due to abortions is 1 in 1000, thus constituting the principle cause of mortality and disproportionately affecting those of lower social-economic status. Since in Argentina there are presently no family planning programs that are free of charge, nor programs that provide information on the matter of reproductive rights, illegal abortions wil most probably continue.

Discrimination against women can be expressed in various forms. Our patriarchal culture promotes, particularly in the domestic environment, many forms of oppression ranging from rape to the suppression of rights such as: the transgression of desires, motives and freedoms, omission, offense, discrimination, disqualification unauthorized use of her body and intromission into her sexuality. Although there are no official statistics, it is estimated that one in every five women suffer some form of domestic violence.

The crisis has had a differential impact on women, who are subjected to discriminatory mechanisms on the basis of their class, ethnicity, gender or age. This is manifest through:

- The decision-making process, which has direct consequences for her and her family;

- The perpetuation of differences in the social, political and legal condition of men and women;

- Limited participation in the labor market, including salary discrimination and occupational segregation;

- Difficulties in access to well-paid and stable employment;

- Reduced access to essential social services, which have increasingly been transferred back to the domestic sphere;

- Increasing migration of women from rural to urban areas in the search for better working opportunities as well as improved health and education possibilities;

- Lost access to health -particularly reproductive health-, educacion and culture, which guarantee the bases needed for a good quality of life;

- Ad campaigns which target women in particular and which promote inadequate and contaminating consumption patterns without regard for the economic limitations of the majority of the female population.

Discrimination on the basis of Sexual Orientation

Data provided by studies undertaken in a number of countries indicate that the percentage of the homosexual population is between 4 and 17%, revealing what constitutes one of the most important minority groups in our society. The condition of gays and lesbians in our country has improved over recent years, fundamentally because of the development of the gay-lesbian movement since 1991, the formation of a number of activist groups in the Buenos Aires and in the interior of the country, and the increasing support of the different sectors of our society.

Despite these welcome, in 1991 a Supreme Court decision denied legal status to an organization known as the Homosexual Community of Argentina (CHA). This decision revealed the legal disregard for the homosexual community, in addition to other more profound discriminatory practices. Legal recognition, nevertheless, was granted to the CHA in 1992, as a result of national and international pressure.

While discriminatory practices were not prominent in the first years of President Menem's term in office, as evidenced by numerous reports received from gay organizations, police repression against the community has increased considerably in recent months indicating a drastic change in policy. The "Gays for Civil Rights" organization received between June of 1992 and September of 1994, 342 reports of discriminatory practices engaged in by the police. These statistics reflect reprimands for misdemeanors and are differentiated from the status of crime in the Argentine Penal Code. The status of these offenses replaces judges with chiefs of police as the official authority, therefore empowering the latter to detain and condemn individuals for periods of up to 30 days. Although the application of reprimands is limited to the city of Buenos Aires, there are comparable norms in the majority of provinces. Article 2, clause D of the "Scandal Decree" prohibits the "use and exhibition of clothing of the opposite sex". Article 3, clause A of the "Public Festivity Decree" reprimands those in charge of establishments "that allow couple dancing between males."

In January of 1992, the government of Canada granted, for the first time in its history, the status of political refugee to Jorge Inaudi, a gay, Argentine citizen born in the province of Cordoba. Canadian authorities were able to confirm that Inaudi had been systematically persecuted and detained on numerous occasions by the Cordoba police because of his sexual orientation. The defense presented by the attorneys in this case, with the support of the International Gay and Lesbian Human Rights Commission (ILGHRC), appealed to the Misdemeanor Code, which was basis enough for the Canadian authorities to allow Mr. Inaudi entrance into the country.

A gay and lesbian organization charged Cardinal Quarracino (Cardinal Primate of Argentina) with violation of Anti-Discrimination Law 23592 for statements made against homosexuals. The magistrate in this case determined, as a form of justification, that the Cardinal's statements were made during the period ofe

Lent, excusing the accused, therefore, of responsibility for promoting hatred and discrimination. The discriminatory statements made by the Cardinal - during the airing of his weekly television program (trasmitted on the state television channel) - goes beyond the official church discourse which, although considering homosexuality an unnatural act, nevertheless promotes tolerance. It should be noted that there was no official church statement condemning the homofobia expressed by Quarracino.

Religious Discrimination

The fact that the Secretary of Religion (a dependency of the Ministry of Foreign Relations and Religion), has arbitrarily registered the inscription of churches in the Register of Religions, required under actual legislation (Law 21.745), is an indication that freedom of religion is not guaranteed in Argentina. It is suggestive that none of the employees of the Ministry are non-Catholic, although the Secretariat is in charge of all religions represented in Argentina (accusation made by Pastor Roberto Gonzalez of the Metropolitan Community Church of Buenos Aires).

In August of 1994, the Minister of Foreign Relations and Religion, based on resolution 2050/94, denied the Metropolitan Community Church (ICM) a request for inscription in the National Register of Religions. The ICM was founded in the United States in 1971 as a consequence of the repression suffered by gays and lesbians, and has representation in 17 countries. This church has been active in Argentina since 1987. Argentina is the only country in the world that has denied the church legal status. This rejection was based on the fact that this Protestant church conducted activities that "resulted offensive to the public order, morality and good customs" while in the process of "publicizing their views on homosexuality, transvestism and transexuality" The church has been accused of "promoting homosexuality as if it were as normal as heterosexuality". Furthermore, the official statement made by the Secretary of Religion, Angel Centeno, alleges that the union between members of the same sex "is repugnant to the values of the Argentine community."

In .February of 1993, while Rabbi Baruj Plavnick arranged, through the Argentine Chancellery, the repatriation of the body of a member of the Brazilian Jewish community, the Secretary for Consular Affairs of the mentioned state office, Carlos Ingenite, forced Mr. Plavnick to remove his kipa (ritual head covering used by the Jews). Plavnick based his request on the argument that the Rabbi was in the Chancellery of the Argentine Republic and therefore should remove his kipa. The Rabbi was obliged to follow these instructions in order to obtain the repratiation of the body. On a later date the Secretary was removed from his post in an attempt, by the government, to ameliorate the ensuing public response.

It has been a year since the state attorney initiated a process to suspend all registration for legal status by religious groups (some of which have been in the process for years), while awaiting the sanctioning of a new law of religion - a law which has, to this day, never been ratified. These are some of the forms in which religious minorities are discriminated against in Argentina.

Discrimination Against the Poor

The economic policies implemented by the present government, far from improving the situation of marginalized sectors, have resulted in a further worsening of the condition of those living below the poverty line. Statistics indicate that the greatest number of unemployed are of low economic status. The great urban areas are perceived as opportunities to overcome economic crisis by thousands of families that migrate from their place of origin to congregate in "poverty rings" that encircle metropolitan centers. The discrimination suffered by this population, through suspicion, fear and rejection is evident in the growing response of those already living in these areas. The new migrants are pre-judged, because of their social-economic status, as thieves and malcontents.

The structural adjustment policies have introduced new cultural norms that are reflected in the fragmentation of the popular sectors. The culture of "individuality", in which the notion that there are some social services which should be maintained public is weakened and replaced with an ethic of individual survival and competition, is increasingly prevalent. This is precisely the basis for arguments against the migration of the underprivileged to urban peripheries.

In this respect, government discourse has tended to characterize the poor as delinquents who should be subject to the full weight of the law. It is in this context that in July of 1993, in reference to the squatting by the homeless of vacant buildings in the Federal Capital, President Carlos Saul Menem gave direct orders to the Federal Police Chief, Jorge Passero, to "forcibly evict" squatters without awaiting a judicial order, even at the risk of combatting their "illegality" with illegal action by the State, according to a declaration publicized in the newspaper Pagina 12 (edition 13/7/93).

Between August of 1992 and January of 1993, the government of the Province of Chaco implemented a program to erradicate the poor by transporting almost three thousand unemployed to the Province of Santa Fe. According to statements made by the Governor of this province, Carlos Reutemann, and by various Chaco community leaders, displacement of the mentioned population to Santa Fe occurred by railway and was financed by some members of the community under the pretext that workers would have access to employment in the fruit harvest. The arrival of the migrants and their illegal occupation of provincial lands caused conflicting situations with those already living in the area. This

situation prompted the Superintendent of Santa Fe, Jorge Obied, to submitt a report to the Ministry of the Interior which alleged that the migrants had been provided free transportation financed by the Governor's office and by other state officials. The majority of those displaced to Santa Fe today live in marginalized conditions as a consequence of rejection by the local population.

The discrimination experienced by the poorer sectors of our society is continuously worsened by government actions that are limited to "identifying the poor", for the purpose of implementing policies to control social upheavals, and further guaranteeing the perpetuation of poverty.

Discrimination Against Youth

Argentine young people suffer various forms of exclusion, running the full gammet of discriminatory practices already mentioned. There are also discriminatory practices targetted directly at youth on the basis of their age, and there have been no campaigns implemented which specifically address this situation.

In 1991, an ordinance was passed in the Municipality of the City of Buenos Aires (45.236) which obliged the posting, "at the entrance of establishments dedicated to public entertainment, of admission requirements". By law, these could not promote differential treatment based on "physical characteristics, race, religion, nationality, ideology, gender, or social-economic status". Nevertheless, in 1994, despite the non-existence of channels for the reporting of complaints by willing adolescents, some incidents attained public notoriety due to their very nature. In one of these cases (occurring in the city of Mar del Plata), a group of 20 university students, the majority of whom were from provinces in the North East, reported that they had been discriminated against while entering a night club because of their race and the manner in which they were dressed. The complaint was filed by the Marplatense University Students Federation. Two months earlier, and in the same city, members of an Australian aboriginal dance company were also discriminated against at a night club because one of its integrants was black. Another case which acquired public notoriety was the aggression suffered by a group of adolescents who were severely beaten in a bar, for the simple reason of "dancing in a manner which appealed to them". This dancing generated a response by the owner of the establishment who ordered security personnel to assault the mentioned adolescents. Legal proceedings were inititated as a result of these incidents, and in their presentation the lawyers for declared that "these occurrences reveal a generally abusive attitude against the young in establishments dedicated to public entertainment and promote situations of abuse and violence that are not curbed by local authorities". "Physical injuries were evident and we were surprised that upon arrival at police pre-

cinct 11A, the victims did not receive immediate attention, despite their physical condition".

In the only reliable opinion poll known (published by the newspaper **Clarin** and conducted in 1992 by the CEOP) in which young people were questioned on themes regarding discrimination, responses revealed that the frequency of reports of discrimination against this group occurred:

- 88.4% in night clubs
- 66.1% in police actions
- 64.4% in employment locations
- 50.6% in schools
- 34.4% in actions by authority figures
- 2.3% never experienced discrimination
- 1.2% unknown/no answer

The same group interviewed also revealed that they believed to have been discriminated against as a consequence of:

- demeanor 78.6%
- clothing 69.2%
- social class 67.1%
- skin color 62.0%
- age 37.5%
- other reasons 5.2%

Needless to say, it is alarming that 37.5% of respondents believe they are discriminated against simply for being young.

X. THE RIGHTS OF CHILDREN

The economic stagnation and insecurity presently experienced have worsened social problems in Argentina, creating a degrading situation of poverty that cannot guarantee the right to life, education, health and housing, particularly for our most disenfranchised groups - children and adolescents. As a consequence, a number of human rights violations have emerged that impact the young by transforming them into "products", such as in the cases of the traffiking of children, child prostitution, pornography and, labor exploitation. All of the above violate the International Covenant (Art. 6.1;7;23;24.1; and 26).

In the case of the rights of children, the State does not assume its indelegable role as protector of the young who, as a consequence, suffer from hunger, malnutrition, abandon, abuse of authority, inadequate legislation, and an inefficient and ineffective system of Justice. In Argentina today, 40% of children live in situations of extreme poverty and approximately 50 children, die per day from conditions resulting from poverty. More than 26,000 children can be found in juvenile detention centers, jails, psychiatric clinics and police stations (UNICEF Report, 1993). There are approximately 4 million children whose daily lives are characterized by difficulties originating in low family incomes, inappropriate housing, lack of psychological and intellectual stimulation, inadequate education and limited access to social services that could contribute to their healthy development.

The problem of child abuse has increased in alarming proportions, not only with respect to physical but also psychological and sexual abuse. Although there are no concrete statistics, it is estimated that one in every five families engage in some form of domestic violence. Violations of the rights of children in what regards health and education, are also on the rise.

Per-capita spending for basic education is below that of 1980, and the incidence of recidivism is, on an average, 4 times greater for poor families than for those of the middle-class. The plan to privatize public education, as proposed in the new education law, "dilutes" the obligation of the state to educate the young and contributes, not only to the deterioration of teacher salaries, but also to an exodus of competent educational personnel from the profession (more than 5,000 teachers have resigned just in the Province of Buenos Aires). This situation is aggravated for those children belonging to indigenous communities who are forced to integrate without the support of bi-lingual programs, and are subject to ethnic discrimination (PREMA Foundation, CTERA-SUTEBA Report).

The lack of official statistics forces us to estimate that prior to 1990, one third of the population was under the age of 15. If we add those between the ages of 15 and 19, the number of young people today reaches 11 million. Available statistics indicate that many of those between the ages of 1 and 4 (approximately 3,500.000) are not registered in early child-hood education programs; that 7 out of 10 children die as a consequence of

preventable conditions (accidents and infectious diseases); that, of the neonatal deaths registered, 3 out of every 4 are preventable and, for post-natal deaths this statistic falls to 6 out of every 10 and; that in 1 out of every 2 pregnancies, in the city of Buenos Aires, mothers do not receive pre-natal care (statistics indicate that the lack of maternal health care is even more acute in the interior of the country).

It should be noted that Argentina did not meet the target goals it established as part of the UNICEF- Year 2000 Program in the following: perinatal health; early control of pregnancy; infant mortality (18,000 children die each year before reaching their first birthday [70% within the first month of life, many for preventable causes]); nutrition; and vaccinations (coverage has dropped). (Argentine Society of Pediatrics - Working Group For The Rights of Children).

Street Children

It is important to note the denigrating conditions to which street children are subject. Many are victimized by low family incomes and are forced to work in the informal economic sector where adults exploit their vulnerability. Some children live permanently in the streets where they are exposed to the risks of sexual and economic exploitation, resulting, in some cases, in loss of life. In 1994, many adolescents perished under questionable conditions in the "red light district", located near the Buenos Aires railway station. These cases had extensive media coverage which revealed that deaths had been a consequence of moving trains, altercations between street gangs and confrontations with the police.

The Council for Family and Children has implemented a program against the exploitation of minors which proposes solutions to many of the problems mentioned. The program is limited because it addresses the needs of only one third of the population at risk and does not provide solutions to the fundamental social problems which plague the young.

Institutionalized adolescents, while supposedly under "protective custody", are victims of police abuse, illegal detentions and torture. Abuse by authorities is also exemplified in unjustified physical punishment, by the withholding of nourishment, and by housing the young in uninhabitable conditions.

The Committee for the Implementation and Monitoring of the Rights of Children included in its 1994 Report (submitted to the United Nations Committee of Experts), the denunciation made by SUTEBA in regard to violations of the rights of children (1993 and 1994) occurring at the Araoz Alfaro Institue, within the jurisdiction of the Under-Secretariat for Children, Family and the Environment of the Province of Buenos Aires. The National Association for the Defense of the Rights of Childhood and Adolescence, denounced the maximum-security characteristics of the Almafuerte Institute, within the jurisdiction of the Undersecretary for Tutelar Protection of the Ministry for the Family of the Buenos Aires Province. The denunciation refers specifically to

the "violation of the respect, dignity, and physical, psychological and moral integrity of the detained youth".

There was also a conflict at the Caseros prison, in which two prisoners carried out a hunger strike during several weeks (sept.-oct.'94) in an attempt to prevent curtailment of the inmate university program carried out under the auspices of the Univeristy of Buenos Aries and CINAP.

Data on the incidence of extra-judicial assassinations of adolescents in poor neighborhoods are alarming. These crimes are usually portrayed as the consequence of supposed confrontations with police and the generalized impunity which protects the latter is used as a means of social control.

Existing data also reveals reports of abuse of authority, abuse of firearms, torture, and deprivation of liberty (COFAVI Report, 1994).

Identity. The Right to a Name and Nationality

Besides cases of infants disappeared during the repression and who continue, to this day, unaware of their real identities, the commerce and trafficking of children in our country is also a worrisome problem. The data available, although unofficial and therefore questionable, reveals that 12,000 infants are illegaly sold and/or adopted every year. The majority of these dealings take place in the interior of the country, with the children being sold from the interior to the Federal Capital. Between 500 and 700 newborns are sold to foreigners every year, particularly Europeans. Upon leaving Argentina these children lose not only their identity, but also their name and nationality.

This commerce is well sustained, on the one hand, by the desperation of mothers who are usually abandoned, under-aged, poor, unemployed, and without family support and, on the other hand, by anxious couples who cannot conceive and who will do whatever necessary to obtain an infant.

This criminal commerce has established a "price" for its "product", which ranges between $5,000 for infants sold within Argentina, and 10 to $20,000 for those sold outside the country. Until 1994 there was no legal recourse for dealing with this crime. Finally, in November, 1994, a law was sanctioned which punishes the kidnapping and trafficking of children and which imposes sentences of up to 10 years in prison, and establishes the criminal status of the "intermediary." The sanctioning of this law, although as of yet not promulgated, was a consequence of the publicity of a case involving the irregular adoption of an Argentine infant by a Spanish couple. Nevertheless, one of the most important criticisms of this law is that it penalizes the parents, although to a lesser degree if they allege need. To the above mentioned should also be added cases of child prostitution and the trafficking of body organs (although the latter is almost impossible to prove) that occur in Argentina every year.

With respect to the matter of international adoptions, we support the position taken by the State which expressed its

reservation to the pertinent articles when adhering to the Convention on the Rights of the Child. The ratification of these articles would imply facilitating documentation for removal of infants from Argentine soil, in contradiction with the national adoption law (Drs. Ricardo Ivoskus, Jorge Luis Calcagno, and Nora Schulman - Institute for Social and Family Studies).

The following information is drawn from three denunciations made by Sister Marta Pelloni, Director of the School of Santa Teresa de Jesus (Goya, Corrientes Province) and member of the Multisectoral Forum for Justice in Goya.

1. The biological daughter of Sonia Fernandez was sold to a German couple. The intermediary was Dr. Ernesto Rodolfo Villa, husband of the Advisor for Child Affairs of the city of Goya (Dr. Villas assisted in the adoption of another infant by a German couple in May of 1992). The sale was not finalized because the mother retracted her decision. A suit was filed against Dr. Villa, although later dropped because of lack of evidence. The Advisor, for her part, argued that the infant would have a "bad future" if maintained with the mother (The sale had been arranged for $5.000.).

2. In 1992, an individual by the name of M. Mercedes reported the theft of an infant. The judge in this case, Dr. Eduardo Panseri, requested a number of investigative searches. In one of these, a clinic belonging to a midwife by the name of Toledo, the police arrived at a time when three abortions were being eprformed. Charges were brought against two individuals in this case. The principle accused is presently free on $50,000 bail. Judge Panseri was separated from his post.

3. The infant, Jose Paulo Torres, born on October 17, 1989, and son of the minor Alejandra Torres was adopted (after one month of birth) by a Spanish couple (Miguel Texeira Andujar, a program analyst, and Maria Jose Garcia, an administrator for the Committee of the International Red Cross of Buenos Aires). The couple submitted false residence in San Ysidro, Province of Buenos Aires. The director of the pre-school "Tia Amanda" handed-over the infant on November 13th, and Fundamor, a private adoption agency ,also in the province of Buenos Aires, functioned as the intermediary. It should be noted that Argentine law prohibits the removal of citizens from the country under these conditions. The reporting of this case before the Judicial system was conducted by the ex-intervenor of the Department of Minors, Mrs. Graciela Hraste. The file disappeared from the Department of Minors and was partially reconstructed by the Criminal Court of the Province of Corrientes.

It should be noted that in the three above mentioned cases, there was total impunity for the parties involved. This leads us to suspect that there must have been government complicity in covering-up the cases.

Juvenile Detention Institutes

On May 30, 1993, the minor, Carlos Ibarra (age 16) was killed by a a gunshot while being held in the Araoz Afaro Institute, a goverment institution under the auspices of the Undersecretariat for Minors, Family and the Environment of the Ministry of Public Health and Social Action of the Province of Buenos Aires. The gunshot was fired by a sub-official of the Provincial Police during the repression of juvenile inmantesm engaged in an upheaval. Police Infantry also participated in the incidents. On August 19, Rogelio Ripoll, Director of the Araoz Alfaro Institute, declared he had been verbally reprimanded for accusing the Assistant Director of allowing some 20 repressors who possessed a list of adolescents, supposedly "troublemakers", to beat and "hose" the interns with cold water (August is a winter month in Argentina). Personnel (both active and retired) of the Federal Penitentiary Service had been contracted to enter the dormitories during the night and assault the victims. Of the eleven adolescents that had been beaten, two had fractures of the hip and ribs. It was only as a consequence of Ripoll's accusations and reports that information was obtained regarding police conduct and that there had been no intervention on the part of the judge appointed to the case. There were renewed incident of violence in the same Institute in october and December of the same year. These episodes have yet to be clarified or those responsible, sanctioned.

Disappeared Children. The Right to Identity

The innumerable cases of children who disappeared in Argentina between 1976 and 1983 is one more dimension of the Doctrine of National Security implemented by the then "de facto" government. Hundreds of children were deprived of their identity, family and history and raised as offsprings of officials of the repressive forces (Navy, Airforce, Army and para-military police). Furthermore, in many cases, these fraudulent adoptions were conducted with the assistance of civilian personnel in the judiciary branch.

Although there have been 218 documented cases of disappeared children, it is believed that 400 actually represents a more realistic figure. In the last nineteen years, 56 of the disappeared have been located. Of these, 30 were returned to their biological families, 13 were legally adopted and continue to live with the families that raised them (in most cases having recuperated their identities and other rights), 7 were assassinated in repressive circumstances, and 6 cases are currently under judicial process. Of all the above, only 4 cases were located by the State, and the others by the Grandmothers of Plaza de Mayo.

To resolve these cases it is necessary to make use of genetic information and dispose of psychological support and judicial intervention. The National Genetic Data Bank (Law 23.511) was created in 1987 on the request of the Grandmothers of the Plaza de Mayo. Three techniques are used for identification of individuals; the HLA, the nuclear ADN, and the mitocondrial ADN. The last two exams were recenty incorporated by the bank. Judicial advisors to the Grandmothers also appeal to a number of legal procedures to restitute the rights of these children (Art 24 of the Covenant; and Arts 7, 8, 11 of the Convention on the Rights of Children). It is in this area that the greatest difficulties are experienced. The judicial system resists returning children to their real families, tends to subject requests for legal intervention to a long process which wears out families, and prolongs ties between the children and the families that appropriated them.

The case of twins born in 1977, during the captivity of their parents, and robbed by a police officer is the most pathetic example of judicial slowness, inoperancy, and outright claudication. With the assistance of the National Genetic Data Bank, adolescents identified in 1989 but not returned to their families until December of 1993. In May of 1994, during a campaign promoted by the media in defense of those police officials who appropriated kidnapped children, a judge revoked an order for guardianship previously conceded to a biological uncle, and authorized visitation rights to the delinquent who raised them, despite the fact that the latter confessed to the kidnapping and is today serving time.

In another case, a child taken from his mother in 1977 and located almost immediately by his grandfather, nonetheless was given in legal adoption to another party, despite pleas made by the biological family. Today, the victim is 18 years old and the judicial system has not allowed blood tests to be conducted that would confirm the adolescent's real identity. Due to incorrect legal action, several appropriators of these stolen children have fled to neighboring countries and efforts to extrdite them have been unsuccessful.

XI. MILITARY CONSCRIPTION AND THE RIGHT TO CONSCIENTIOUS OBJECTION

The following observations will be made regarding mandatorymilitary service and conscientious objection.

Personal Guarantees:

Article 7 of the Covenant on Civil and Political Rights and the Universal Declaration of Human Rights establish that no one will be subjected to torture or other cruel and degrading treatment, although in Argentine military barracks these practices continue:

a. conscripts are obliged to engage in physical exercises that demand resistance beyond their capabilities, resulting, in many cases, in irreversible physical and psychological damage;

b. physical and psychological punishment are used as means of guaranteeing that orders be obeyed;

c. discriminatory practices (including physical punishment) are used against those conscripts that profess other religions;

d. there are no guarantees for the integrity of life.

The above can be proven by the great number of deaths and mutilations resulting from the use of arms and other causes, and unsatisfactorily investigated by the justice system, since only in a very few cases have responsible parties been charged. The death of soldier Carrasco in March of 1994 is a case in point, in addition to the deaths, by immersion, of two soldiers in January of 1995 in the swimming pool of the Granaderos and Caballo Regiments, and by the assassination of a solidier in the Punta Indio Base, also in January of 1995.

Law 24429

The Voluntary Military Service and Alternative Social Service Law, sanctioned on December 14, 1994, clearly provides (in Article 2) for State guarantee of rights that safeguard human dignity. The Argentine Government initiated, prior to the promulgation of this law, a publicity campaign which openly promoted the abolition of mandatory military service. Although this law incorporates stipulations for voluntary military service and alternative social service, the Military Conscription Law (17.531) has not been revoked.

We object to Law 24429 because of its discriminatory nature.

a. The conscientious objector is only guaranteed clothing, nourishment, transportation and medical attention (Art. 25). For those persons engaged in voluntary military service, on the other hand, economic remuneration and education are provided (Arts. 19, 4 and, 2), in addition to other privileges such as preferential treatment and the accumulation of points to be used in the case

of those who take jobs in the National Public Administration or any Municipal and Judicial positions, and assistance in the purchasing of homes (Art. 9, inc. B).

b. Conscientious objectors are denied the right to work, which is in clear violation of Arts. 6 and 7 of the International Covenant on Economic, Social and Cultural Rights, and of Art. 23 of the Universal Declaration of Human Rights.

c. In the case of war, conscientious objectors are subject to trial in military courts instead of in civil courts, as is the right of all civilians.

We object to Law 24.429 because of its punitive nature.

a. This law imposes prison terms of 2 to 4 years and denies professionalization for those who reject alternative social service (Art. 27, Inc. 1), violating in this manner, the Declaration of the U.N. Commission on Human Rights which establishes that States should abstain from incarcerating conscientious objectors, and that alternative military services should not be punitive;

b. This law also establishes the non-remuneration of alternative social service, which is another form of discrimination against consciencious objection.

The World Conference on Human Rights held in Vienna in 1993 states in its final document, that "governments should reject legislation which favors the impunity of those responsible for grave violations of human rights such as torture, and punish these violations therefore consolidating the reign of law". We consider that the number of deaths, torture and other mistreatments practiced in military service without sanction, to be another form of impunity.

XII. SITUATION OF INDIGENOUS PEOPLES

Ten years have passed since the sanctioning of Law 23.302 on Indigenous Policy and Assistance to Aboriginal Communities, even though the Law was reglamented only in 1989. We can affirm, however, given the following, that the mentioned law is simply pro-forma:

- the INAI (National Institute for Indigenous Affairs), the department responsible for implementing the law, has only existed in name, has appointed only one Director and Assistant Director (without the participation of indigenous representatives), and does not count with sufficient federal funding to execute the services established by law;

- the services provided by the Register of Indigenous Communities (which establishes the legal status of all Argentine indigenous communities) have been suspended or remain unfulfilled;

- Agreements and services that refer to land distribution, health, education, housing and retirement benefits have not been implemented;

- the State has not communicated to the International Labor Organization its ratification of Treaty 169 (Law 24.071).

The following cases also deserve mention:

- the Ministry of Finance has maintained under its control the Ingenio Las Palmas property (39,000 acres), located in the Chaco province. The government initiated, in 1992, proceedings for its purchase, although it has been historically inhabited by 350 indigenous families who have used the land for agricultural purposes and as ceremonial burial sites. The community filed a suit against the government to interrupt the sale. The Ministry, nevertheless attempted to convince a community leader to accept a donation 2,300 acres as a trade-off for suspension of legal demands. The government offer was rejected and, as a consequence, the government sent the community leader to Costa Rica.

- the indigenous communities of the Teuco-Bermejito area (Chaco province) requested the restitution of 150,000 acres of land conceded by the government in 1926. The provincial government, with assistance from the federal level, made available $100,000 for the management and return of the lands. These funds were "misplaced" by the Provincial Bank, the Covenant has not been concretized, and it has been five years since any attempt has been made to resolve the situation;

- Laws 24.242 and 24.334 which regard the appropriation of lands by the Kolla of San Andres, Santa Cruz, Angosto de Parani (Oran, Salta), and Finca Santiago (Iruya, Salta) have not been implemented;

- a policy of apartheid characterizes social relations in the province of Misiones; and

- the environment inhabited by indigenous communities is constantly assaulted by the indiscriminate cutting and burning of trees for charcoal production.

All the above contribute to the migration and cultural genocide of Argentine indigenous communities.

XIII. SITUATION OF IMMIGRANTS

Although no official statistics are available, it is estimated that there are, in Argentina today, more than 2 million immigrants originating from neighboring countries, of which more than half maintain illegal residence. The situation of foreigners has been aggravated, within recent years, by an increasing xenophobia caused, fundamentally, by unavailability of employment in the Argentine labor market. Recent polls reveal that the unemployment level (12.2%) is the determing factor for the negative and discriminatory opinions against immigrants, since these are perceived as "negatively impacting the Argentine workforce."

Despite the inexistence of official statistics which demonstrate that immigrants absorb employment, the government, through statements made by various functionaries, such as that of the ex-Minister of the Interior Carlos Ruckauf, have contributed to the creation of a climate that supports the expulsion of undocumented foreigners and the policing of Argentine borders. The first xenophobic remarks by the government were made on July of 1993 by the Presidential Under-Secretary, Luis Prol, when he publicly blamed foreigners from neighboring countries for illegally occupying housing in Buenos Aires. For his part, the Director of the Population Secretariat, Aldo Carreras, declared that "what is fundamental, is coming to an agreement on what type of population is desired in a country that is basically unpopulated." In January of this year, President Carlos Saul Menem, upon being informed of the official unemployment statistics provided by the National Institute of Statistics and Census (INDEC), disqualified these as "incorrect" and suggested that many of those presently employed are illegal and therefore are not counted in official statistics.

Nevertheless, the official hypothesis that unemployment is rising due to illegal immigration has lost some of its influence with the recent publication of results of the Permanente Household Survey conducted by INDEC. According to these, the percentage of unemployment caused by illegal insertion into the labor market constitutes only 0.2% of the total percentage of unemployment and that, in reality, illegal immigrants occupy positions that Argentine workers, themselves, tend to reject.

To "attack" the problem of illegal residents, the government has initiated a campaign to apprehend them through police operations that detain undocumented workers. Within recent months there has been frequent media coverage of raiding of sweat shops where immigrants are forced to work under sub-human conditions and receive insignificant salaries.

Although employers were fined for this exploitation, immigrants were, in fact, the most victimized by lack of legal protection and economic loss. According to official information published in the newspaper Pagina 12, in the bimester ending in October of 1994, 700 illegal immigrants were deported. The indirect effect of this policy is the migration of foreigners to Buenos Aires to obtain legal documentation (in itself, a long and ardous process). Many must reside in hotels or unoccupied buildings exposing themselves to further dangerous and legal detentions.

law is promulgated find themselves in the situation of being forcibly disappeared, shall have the right to perceive, through their 'causahabientes', an extraordinary benefit" and "the 'causahabientes' of all those persons who died as a consequence of the action of the Armed Forces, the Security Forces or any other paramilitary group before December 10, 1983, shall have the right to perceive an equal benefit". The payment of this benefit will be made in Treasury Bonds: "The value of the benefit established by this law can be made effective in accordance with the terms of Law 23.982 (This law, which deals with the consolidation of the public debt, permits the same to be paid with public tender.).

These two laws establish an economic compensation for the victims of prison, disappearance and assassination through the end of the military dictatorship (Decree 1023/92, which reglamented Law 24.043, limited this period to that included between November 6, 1974 and December 10, 1983.).

Our Civil Code establishes the obligation of economic reparation, and it measures in money terms not life or liberty, but the consequences or the value of the damage suffered.

Beyond the economic compensation itself, the fundamental importance of these laws lies in the State's recognition of its responsibility in the repression and in the assassination and disappearance of tens of thousands of persons.

Nonetheless, it is necessary for us to establish what we understand to be "reparation". Reparation must be integral, and as such, economic compensation is only a part of due reparation. For us, what is really important if Truth and Justice.

Already in 1989, when the Working Group asked the relatives of the disappeared if they had initiated legal action to obtain reparation and if so, what the results had been, the relatives expressed their preference for undertaking actions which led to the investigation of what had happened and the identification of the guilty. At the same time they added that other victims had unsuccessfully sought compensation.

If the State admits its responsibility, it should also admit its obligation to assure an integral reparation to the victims. And the State'sobligation is to open the possibilities of investigation and respond to the question of what happened with each and every one of the disappeared.

Twenty years have passed since the beginning of State Terrorism in Argentina. Sixteen years had to pass for the State to accept its responsibility for political detainees and twenty years for it to offer economic compensation to the disappeared and assassinated.

But time is not the only thing to have passed. In 1991, a complaint was filed before the Interamerican Human Rights Commission on behalf of 14 prisoners who were demanding an indemnization. The Commission found the Argentine Government to be responsible for the same. International pressure and the sure evidence that an avalanche of suits would be opened against the State, as well as the pressure from national human rights organizations, were the determining factors in the sanction of law 24.043.

International pressure for reparation and the fact that favorable resolutions had been obtained in some cases demanding

compensation (Cases of Hagelin, Tarnopolsky and others), were determining factors in the sanction of Law 24.411.

These laws only affect Sate coffers. They do no touch the interests of groups and institutions interested in maintaining impunity.

Law 24.321 deserves special mention. Shortly after the beginning of the constitutional period, the relatives of the disappeared began to interest legislators in a bill to make possible the resolution of legal situations posed by the forced disappearance of family members, without being obliged to undergo proceedings to declare the "presumption of death". On May 11, 1994, Law 24.321 was sanctioned which legally establishes the figure of "disappeared" as well as the opportunity for those who were forced to declare the "presumption of death" to reconvert said declaration to "absence for forced disappearance".

This is a legal instrument which favors - not economically - those who suffer the forced disappearance of family members, and it is a triumph for those of us who pressured for its establishment.

In conclusion, we reiterate the necessity of continuing the investigations designed to provide a response to the relatives of the disappeared, recalling the recommendations repeatedly offered by this Committee and by the Inter-American Human Rights Commission (Report 1985/86): "the inalienable right to know the truth about what happened in the past, as well as the circumstances and motives which made possible the commission of abhorrent crimes, in order to impede their being repeated in the future".

XV. FREEDOM OF THE PRESS

The restoration of constitutional government as of December, 1983, supposed a profound and fundamentally postive change for journalistic activity, including the return of exiled journalists, the freeing of press workers who still remained imprisoned, the reopening of media closed by the dictatorship, and, in general, greater freedom of expression. But over the past few years there an offensive has been carried out against the press, the nature of which can be summed up in judicial complaints (in the majority of cases, initiated by government functionaries), attacks against journalists (in the majority of cases carried out by members of the security forces), and anonymous or open threats,

Realization of the right to information and the freedom of expression and information is far from reality in Argentina. Despite their own technological advances - something which favors the appearance of new and pluralist radio and television media -, the credibility which the media have gained worlwide at the expense of other institutions, and the role which the press is assuming in the heart of these complex modern societies, all of which would seem to indicate the existence of greater freedom of the press, this is relative. Furthermore, in any case it represents the force of reality rather than the result of government action, which, in contrast, seeks to silence journalists commit-

ted to the truth and to the social development of humanity.

In August, 1993, a veritable campaign was unleashed against journalists, targetting them as "the real opposition to the action of this government". At that time, in opportunity of the inauguration of the Rural Society's Annual Exposition, in presence of the National President, a visible apparatus of intimidation and aggression claimed as victims several journalists who had been sent to cover the event. In the aftermath, hundreds of journalists throughout the country were threatened. The two most notorious cases were the violent physical attacks against Marcelo Bonelli, of Radio Mitre and the newspapaer Clarin, and Hernan Lopez Echague, of Pagina 12, the latter in two opportunites, as well as the detonation of an explosive device at the FM Radio La Tribu.

During several months, Alberto Carlos Vila Ortiz, editor in chief of the daily La Capital, in Rosario, Santa Fe Province, was the object of threats against him and his family and he was kidnapped in an auto, over the course of several hours, in the plain of day.

On November 11 of the same year, Mario Bonino disappeared in the trajectory between his home and the headquarters of the Association of State Workers, where the Union of Press Workers of Buenos Aires (UTPBA) was holding a Seminar. His cadaver appeared four days later, floating in the Riachuelo.

These cases along with the more than 500 aggressions and threats registered, have never been resolved (Aggressions: Federal Police agents against journalists of the state television channel ATC, in the course of a march demanding work; against the night watchman of the UTPBA, Miguel Gavilan; against journalists of diverse media in the inauguration of the Rural Society Exposition. Threats: against journalists from Pagina 12 and the news prgoram of Canal 13; against journalists from Buenos Aires covering the assassination of military conscript Carrasco; against leaders of the UTPBA; and on behalf of the union leader Armando Cavallieri, a death threat against journalists of the magazine Noticias). This, despite the fact that all of these incidents were denounced opportunily and in form, and that the Argentine government designated a special prosecutor - Gonzalez Warcalde, whose action was truly lamentable - specifically dedicated to these incidents.

In regard to judicial and legislative matters, the government as filed suit against dozens of journalists and media, in particular those who criticize or merely inform about government acts which are often characterized by corruption. Journalists Marcelo Helfgot and Alberto Ferrari were sentenced with fines of $25,000 dollars for a journalistic article which a Judge considered injurious. The verdict is being appealed the the Supreme Court of Justice.

In May, 1993, as a result of actions taken by the UTPBA and other entities (actions which reached the Intermaerican Human Rights Commission) and international pressure, the crime of disrespect - which had been abused in numerous suits against the press - was repealed from the Criminal Code.

The Argentine government targets independent journalism as its principal adversary and as a result, carries out a deliberate policy designed to silence its voice.

Another recent incident forms part of that policy. On January 2, 1995, the Executive submitted to the National Congress two bills which seek to unduly restrict this right. One of them would modify the Criminal Code in the Title which refers to crimes against honor; the other would establish an obligation for journalistic enterprises of whatever type to contract insurance in order to guarantee the payment of damages that these enterprises might eventually provoke against the honor of persons.

Both bills affect the right to press freedom. In the case of the former, the disproportionate size of the sanctions to be applied to crimes committed via the media present us with a paradoxical situation in which slander is transformed into one of the most severly punished crimes in the entire Criminal Code. Six years for slander can hardly be compared to the same number for emotional or preterintentional homicide; neither can three years for injury be compared to an equal sanction for culpable homicide; slander would have the same sanction as mutilating injuries. With these disproportionate penalties, to be a journalist would again become a high risk profession in our country.

By making the adquisition of insurance obligatory, the silencing of criticism or opposition commentaries can be silenced: any communication medium which has as an editorial policy the denunciation of acts of corruption would have to pay an extremely high mothly premium, because the insurance companies would establish the premium in order to cover eventual cases in which the denunciations could not be sustained in a penal court. At the same time, any small independent publication would have to cease to publish or go underground, due to the gact that to pay the minimum annual premium ($25,000) would signify an insurmountable obstacle to any small group of persons interested in permitting their ideas to circulate freely via an laternative publication.

On the other hand, is must be underscored that the very existence of a law which establishes cruel and confiscatory sanctions for press crimes is a serious threat, even in the case that it were never applied. Its very sanctioning would therefore alter the terms of public communciation.

This proposed bill, which would extend the concept of slander to indeterminate conducts; impose sanctions equivalent to those corresponding to emotional homicide and mutilating injuries; subjet journalists to fines equivalent to the value of five dwellings; incorporate an economic compensation as part of the sanction - not foreseen for any other crime -; impose a prison sentence without antecedents in comparative law; a bill that is inspired in another, nearly 40 year-old bill which was partially reflected in norms adopted in past dictatorial reforms but made even harsher here; proposed in the midst of an electoral campaign; pushed by a government questioned for corrupt acts; a bill which would impose a mandatory insurance coverage that does not exist for any other crime, nor matter how serious; whose predecessors are other bills which were quietly pushed forward after the crime of disrespect was repealed, - leaves little room for doubt with respect to its intent to violate human rights and its clear authoritarian orientation.

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IMPLEMENTATION OF THE INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Written statement submitted by the Peace and Justice Service

The Secretary-General has received the following written statement, which is distributed in accordance with Economic and Social Council resolution 1988/4.

[25 October 1994]

I. INTRODUCTION

This document was prepared by a number of social organizations, including the Argentine Workers' Congress, the National Centre for Retired Persons and Pensioners/ATE (State Workers' Association), the Argentine University Federation, the Association of Labour Lawyers, the Regional Programme of Economic and Social Research, the American Association of Jurists, and the Latin American Peace and Justice Service.* We are submitting it to the Committee in recognition of its responsibility to supervise implementation of the Covenant and because we consider it important for society to participate in the management and monitoring of the realization of our rights.

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* The present document is in fact a summary of a fuller report which we are submitting to the Committee, together with a number of documents and additional complaints.

In our view, the Argentine Government is not fulfilling its obligations under the Covenant. There is evidence of this in the deterioration of the situation with regard to the economic and social rights of a large proportion of the population and the obvious abandonment by the State of its role as guarantor of these rights:

Despite the increase in the gross domestic product, there is continuing impoverishment and increasing unemployment;

Out of a population of 32 million, more than 5 million people have difficulty in ensuring their rights to food, housing, health and education;

Thirty-seven per cent of the economically active population are currently unemployed or underemployed or have no job security;

Poverty and social inequity have a disproportionate effect on certain sectors of the population, including retired persons or pensioners, minors, women and indigenous persons;

There is also an obviously disproportionate impact on the residents of the conurbation of Buenos Aires and the interior of the country as a whole;

The Government's policies tend to deny citizens the rights they have acquired, these policies being reflected in retrograde legislation, arbitrary enforcement of such legislation, inefficiency and corruption in the use of public property, and impunity.

The report submitted by the Argentine Government** does not follow the guidelines for its presentation. In addition to omitting two of the articles of the Covenant relating to the right to social security and to an adequate standard of living, respectively, it fails to include an accurate description of the actual situation in Argentina or to evaluate achievements and the obstacles encountered in implementing the Covenant. Furthermore, the Government has made no provision for any agency to publicize the report or for any internal discussion on it.

For these reasons, we have contacted the Committee in the hope that its conclusions and recommendations will help to improve State policies in relation to these rights.

II. GENERAL COMMENTS

The socio-economic background

The neo-liberal policies pursued since the military coup of 1976 have led, on the one hand, to the opening-up of the economy and indebtedness and, on the other, to a decline in industrialization, the concentration of wealth and the exclusion of the most disadvantaged sectors of the population. The

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** E/1990/5/Add.18.

consequences of these policies have been a decline in real wages and an upsurge in underemployment and unemployment. The demands of the international financial institutions have resulted in a gradual reduction in the level of State investment. The State is abandoning its role as guarantor of collective rights and its duties of distribution and regulation in the face of the untrammelled play of market forces.

Economic stability, which the present Argentine Government proclaims as its main achievement, was not achieved by disciplining the major economic groups, but through the sacrifice of the great majority of the population. In a recent report, the World Bank admitted that there are not many countries in the world where the privileged sectors have benefited to such an extent from the unequal distribution of wealth. The richest 20 per cent of the Argentine population account for 51.6 per cent of the national annual income, whereas the poorest 20 per cent account for less than 5 per cent. 1/

Social inequality goes hand in hand with worsening regional inequality. Almost without exception, the main economic and social indicators reveal that the process of segmentation and exclusion has accelerated, exacerbating the country's sharp division between those who have been integrated into the new model and those who have not. The former live mostly in the capital; the second, who constitute the vast majority, are also concentrated in the capital, but disproportionately so in the Buenos Aires conurbation and in the interior. In the past year, this situation of backwardness and inequality has given rise to considerable social agitation and unrest all over the country.

ARTICLE 6 - RIGHT TO WORK

In Argentina, the right to work has been restricted by the current economic policy. According to the latest official statistics (for May 1994), the growth of overt unemployment (10.8 per cent) is accompanied by a drop in the rate of activity (from 41.5 per cent to 41.1 per cent), together with a further increase in underemployment (10.2 per cent). Including persons who have no job security, 37 per cent of the economically active population - 5 million persons - are facing labour problems.

The employment generated by the current economic plan stems from a labour policy that tends to replace permanent workers by temporary workers.

Argentine labour legislation since 1989 has not sufficiently protected workers' rights, but rather has legalized situations of inequality, thereby violating agreed international standards, with the aim of reducing labour costs.

The National Employment Act (No. 24,013) has not helped to create real jobs. On the contrary, it has introduced into the labour relations system methods of hiring personnel which are characterized by the temporary nature of the jobs, the absence of any compensation for dismissal or the reduction of such compensation to negligible amounts, and the lowering of employers' social security contributions.

ARTICLE 7 - RIGHT TO JUST AND FAVOURABLE CONDITIONS OF WORK

Within a framework of high rates of unemployment and underemployment, the Government's restructuring policies have made wages the principal adjustment variable. The purchasing power of the average wage fell from a base of 100 in January 1984 to 57 in 1990, rising to 64 in 1993. 2/ In April 1991, when the Government's convertibility plan began, the average take-home pay of the industrial worker covered 96 per cent of the basic family shopping-basket, whereas by February 1994 it covered only 51 per cent.

Decree No. 1334/91 and Decree No. 470/93, by modifying collective bargaining procedures, make it possible to consolidate a regressive policy of income distribution which is contrary to the principle of fair remuneration embodied in the Covenant, using productivity as the basis for determining remuneration instead of the needs of the worker.

Similarly, the Collective Bargaining in Public Employment Act was promulgated early in 1993, but up to now the Argentine Government has continued to shirk its obligation to negotiate with its workers.

As regards workers' health, since Act No. 24,028 was adopted in 1991 there has been a decline in protection against occupational diseases and industrial accidents. At present, another set of regulations is planned which will aggravate the lack of protection since it will establish a system of mandatory insurance administered by private commercial entities, and not by a social security system, as required by article 9 of the Covenant.

The limitation of the working day and the right to rest are provided for in Act No. 11,554 and Act No. 20,744 concerning labour contracts. However, the planned amendments to the Framework Agreement for Productivity and Employment, which has been signed by one sector of the trade union movement and by some employers and is being promoted by the Executive, will result in repudiation of this protection because they seek to give the employer the unilateral power to determine both the duration and the scheduling of working hours.

ARTICLE 8 - TRADE UNION RIGHTS

The right to form trade unions is hampered by Argentine trade union legislation which is at variance with international provisions. This is the case of the Argentine Workers' Congress (CTA), which, 16 months after requesting recognition as a trade union, is still being denied recognition by the Ministry of Labour. Furthermore, trade unions that oppose the Government are being victimized by policies which prevent them from operating freely, such as the improper withholding of contributions reported by two unions in the province of Corrientes.

With regard to the right to strike, in March 1994 the ILO Committee on Freedom of Association took the view that Presidential Decree No. 2,184/90 set limits on that right when it granted the Ministry of Labour discretionary

power to decide on the essential services to be performed after a call to strike has been issued. Despite that opinion, the Argentine Government declared that the strike ordered by the CTA and the MTA on 2 August 1994 was illegal.

ARTICLE 9 - RIGHT TO SOCIAL SECURITY

The report of the Argentine Government completely omits this article. Regarding the situation of non-working persons, information from the National Social Security Administration for June 1994 indicates that 70 per cent of retired persons and pensioners receive an income of the order of 150 pesos a month, whereas the cost of the family shopping-basket is calculated at 900 pesos. 3/

Against this background, the recently enacted social security reform (Act No. 24,241) was the culmination of the Government's abandonment of its obligations in this area, the existing social security system being replaced by a mixed system that includes a private capitalization option and delivery system. 4/ Its consequences include the following:

A drastic reduction in the funds available for the payment of pensions to present and future pensioners;

The non-participation of the currently employed and retired workers in the administration of the funds;

The retirement age for employees has been raised by five years;

There is no guarantee that pensioners will receive 82 per cent of their last salary adjustable for inflation since the amount of benefits now depends on a combination of variables, including the financial success of the institutions administering retirement and pensions funds.

For these reasons, the retired persons' and pensioners' organizations are advocating the repeal of this Act and its replacement by a new law that will reinstate a joint delivery system.

Most of the programmes designed to deal with the problems of the elderly are either not being implemented or do not reach their target population. The only palliative measure that the State has succeeded in implementing has been the granting of subsidies (ridiculously small) to those retired persons whose only income is equivalent to the minimum wage.

Furthermore, the right to social security of workers who are employed is being infringed because of the serious crisis in the welfare services. In addition to the substantial decline in the resources of these services, caused by the growing unemployment and the drop in wage levels, there are in many cases policies of misappropriation of funds and corruption which leave their supposed beneficiaries with no protection.

As for the national unemployment insurance, it offers only relative protection since in 1993 only about 11 per cent of all unemployed persons benefited from it.

Special protection for the indigenous peoples

In spite of the provisions of Act No. 23,302/85, the indigenous communities are not given the necessary protection since the Act has not been effectively implemented. The Government's failure to deposit the instrument of ratification of ILO Convention No. 169, notwithstanding its approval by Parliament, has prevented its implementation and supervision.

ARTICLE 10 - PROTECTION OF FAMILIES, MOTHERS AND CHILDREN

Family planning and protection of mothers

The Government's report sets out Argentina's interpretation of family planning, stating that this is a matter which concerns parents and no one else, and that the State should merely encourage responsible parenthood. 5/ Attempts to legislate on family-planning policies over the past 10 years have had little impact. Birth control continues to be inaccessible to most women.

The absence of a government policy in this area is directly related to the large number of abortions recorded in Argentina (over 350,000 per annum). Under Argentine legislation termination of pregnancy is a criminal offence; in most cases therefore, it is performed at great risk. Abortion has thus become the main cause of deaths of mothers (100 for every 100,000 abortions), the most needy women being disproportionately affected.

According to official data of May 1994, the under-20 age group has the highest unemployment rate compared to the overall rates (30.5 per cent as against 9.5 per cent in the same month). Unemployment and underemployment among young persons have given rise to a very rapid increase in social tension. According to a judicial report issued in 1993, the number of cases coming before the juvenile courts has increased by about 135 per cent over the past 20 years. 6/

ARTICLE 11 - RIGHT TO AN ADEQUATE STANDARD OF LIVING

The Government also omitted this article from its report to the Committee.

The official data indicate that, compared with 1980, the degree of social inequality has increased significantly, as has the number of persons who have difficulty exercising their fundamental rights to housing, food, health and education. According to data from the National Institute of Statistics and Censuses (INDEC), in October 1993 about 13.1 per cent of households - representing more than 5.5 million persons - had incomes below the poverty line. The number of persons classed as destitute was 1.7 million, or 3.6 per cent.

Housing

Paragraph 365 of the report of Argentina recognizes that there is no specific legislation dealing with the founding of a family. Using the 1991 national census as a basis, the office of the Under-Secretary for Housing

calculates that 15 million persons, or 47.5 per cent of the population, live in substandard housing, and only 37 per cent of occupied private dwellings have running water and sewerage.

The housing shortage worsened between 1980 and 1991 because the number of families occupying substandard housing increased; some were living in overcrowded conditions, 7/ while others were occupying dwellings illegally. 8/

The Government's response to the housing problems has been to increase the availability of private loans, but the loans offered are aimed at the middle-income sectors who are not suffering serious housing problems. On the other hand, in recent months there have been many evictions in the most needy sectors, such as that of the 200 families who had been living in the Bodega Giol in the capital. Their situation has still not been resolved, despite official promises.

ARTICLE 12 - RIGHT TO HEALTH

The recurrence of cholera, measles, meningitis and tuberculosis is due to the deterioration in general standards of nutrition, the absence of basic health measures and shortcomings in the infrastructure of health care centres. Water pollution is responsible for 80 per cent of infant mortality.

Mothers and children in the most impoverished sectors who have no social welfare coverage lack any form of protection. This situation has resulted in higher rates of disease and deaths in children under one year of age, low birth weights and maternal mortality. 9/ Thirty per cent of pregnant women go to hospital only to give birth.

Public health system

Under the current system, the State has been gradually relinquishing its position as direct provider of public health, as well as its authority to regulate a health system, and over time this has caused increasing commercialization of the system and high levels of social inequality.

The operation of the public hospitals is seriously affected by the lack of equipment and proper hospital infrastructure, the very low wages, staff cut-backs, lack of training and poor hygiene. There are still, for example, large psychiatric hospitals with more than 1,000 patients and where two nurses have to take care of 100 patients per shift. 10/

Under the health care system reform plan promoted by the Government, a user with no social security coverage or pre-paid medicine will pay for the service and only proven welfare cases will receive free care. As far as prevention measures are concerned, since there is no comprehensive health policy, either nationally or locally, the prevention campaigns are not followed through. 11/

AIDS prevention

The Argentine Government's report includes a description of the goals and activities of the HIV virus infection control and prevention programme. Its ambiguous wording shows the considerable extent of improvization on the subject.

Act No. 23,798, adopted in 1990, prohibits discrimination and promotes prevention measures and the care of persons with the AIDS virus. However, the manner in which AIDS is dealt with is typical, since the existence of the legal framework does not mean that it is enforced. Despite that fact, and the recent statistics described as alarming by the adviser to the Ministry of Health for the national programme to combat human retroviruses and AIDS, the Government has set up no national campaign against AIDS. 12/ Nor has a related study been carried out on hospital infrastructure.

Right to a healthy environment

The country's main environmental problem is poverty. Furthermore, there is no national legislation which provides for environmental offences or establishes the criminal responsibility of persons who commit such offences. Evidence of this is the fact that every year 300,000 tons of toxic waste are discharged into the River Plate, on whose banks 6 million people live. The main source of pollution is the 7,300 industries which dump their waste into the river; only 20 per cent of them are inspected.

III. QUESTIONS FOR THE ARGENTINE GOVERNMENT

Bearing in mind the functions of the Committee and the purpose of the submission and consideration of government reports, in accordance with articles 16 and 17 of the Covenant, we suggest that the Committee should ask the Argentine Government the following questions.

Article 6

1. Considering that the legislative measures have had virtually no impact on unemployment, does it intend to continue pursuing those measures and, if so, on what basis?

2. Taking into account the emergency employment situation described above, what active employment policies does it propose to pursue throughout the country and how does it explain those policies within the framework of the Government's overall economic policy?

Article 7

3. What mechanisms or provisions does it envisage in order to restore collective bargaining with full rights and to achieve fair remuneration, in keeping with its obligations under the Covenant and other international instruments?

4. Does it envisage any mechanisms or bills which will extend the concepts of Decree No. 470, regarding persons authorized to engage in collective bargaining, to leaders representing the bargaining levels elected by the parties?

5. On what basis have the levels of protection against occupational diseases been lowered and how does the Government justify the failure to comply with the relevant international standards?

6. What measures does it envisage taking in order to guarantee the non-delegable powers of the Government to require compliance with industrial safety regulations?

7. What legislative measures does it intend to apply in order to guarantee the limitation of the working day, and daily, weekly and annual rest?

8. Does it intend to adopt any mechanism to restrict the widespread use of overtime?

Article 8

9. What measures does it envisage in order to bring the trade union laws into line with international standards?

10. What are the obstacles to the registration of the Argentine Workers' Congress as a trade union body. The Government should be urged to proceed to register it.

11. On what grounds did the government of the province of Corrientes arbitrarily discontinue the free operation of the trade unions? The provincial government should be urged to repeal the decrees in question.

Article 9

12. How does the Argentine Government propose to rectify the shortcomings in the social welfare system?

13. Given the current situation in the social welfare services, especially in the PAMI, which serves retired persons, what action does it propose to take in order to solve the problem of benefits and to guarantee the right to health and social security?

14. Under the Federal Fiscal Pact, the provincial pension funds will now come under the control of the central government. In this situation, how does the Government propose to guarantee the right to participate in the administration of the funds and ensure that their earnings are safeguarded for the purposes of social security?

15. Why must pensioners who are working contribute to the unemployment fund?

16. What is preventing deposit of the instrument of ratification of ILO Convention No. 169?

Article 10

17. What measures does the Government propose to adopt in order to make possible social participation in, and control of the various programmes referred to above?

18. In the light of the problem of the abduction of, and trafficking in, children, what measures is the Government taking to control the problem and punish the persons responsible?

19. What has been the impact of the deregulatory measures adopted in Act No. 24,013 and the vocational training programmes on youth unemployment and underemployment?

Article 11

20. What fiscal measures does the Government propose to take in order to reverse the growing inequality in the distribution of the national income?

21. Given the importance of school canteens in meeting the nutritional needs of children, how does the Government propose to guarantee the necessary resources for their operation and efficient use?

22. What measures is the Government taking to assist the poorest sectors in obtaining adequate housing? What is the budget allocated to this item and how is its execution controlled?

23. What measures have been taken to restore to the families evicted from the Bodega Giol their right to housing and to prevent other evictions?

Article 12

25. What measures does the Government propose in order to halt the recurrence and spread of diseases such as cholera, tuberculosis, Chagas' disease and hepatitis B?

26. Given the difficult financial situation of many social welfare institutions and the introduction of the new self-management hospital system, how does the Government propose to ensure that the public receives non-discriminatory health care?

27. How does it propose to guarantee compliance with the law on toxic waste, and with essential standards of hygiene in connection with health workers?

IV. CONCLUSION

Given the regressive situation regarding the realization of the rights protected by the Covenant and the obvious predominance of government policies which tend to accentuate the lack of protection of broad sectors of the population and to exclude them from the processes of management and control of government action, we consider that it is important for the Committee to express its concern to the Argentine Government and to communicate to it any recommendations it deems appropriate. In this connection, we expressly

request the Committee to give consideration to the adoption of specific follow-up measures including a possible verification and evaluation mission to Argentina, which would enable the constructive dialogue between the Committee, the Government and society to be strengthened, with a view to the promotion and protection of those human rights which are at present curtailed.

Notes

1/ In 1974, for Greater Buenos Aires, the richest 20 per cent received 39.5 per cent of income, whereas the poorest 20 per cent received 8.8 per cent (PRIES-Southern Cone based on INDEC data).

2/ The recent World Bank report referred to above shows that the loss in value of the real wage has been relatively greater for the lowest paid wage-earners, and also for the least skilled.

3/ The situation of pensioners and retired persons has been made worse by the cancellation of benefits and exemptions from payment for public utilities which the Government has now placed in private hands. The small dividends obtained from the sale of public enterprises, which originally the Government had promised to use for social welfare, were never allocated to that sector.

4/ It is important to point out that this law obliges anyone who does not expressly state his preference for remaining in the State system to join a private scheme; furthermore, the percentages set by this law for calculating pensions encourage younger persons to opt for the private system.

5/ In the report prepared by the Argentine Government for submission to the International Conference on Population and Development in Cairo in 1994, in the "National report on population", the terms "reproductive rights" and "reproductive health" widely accepted in the international community have been replaced by "responsible reproduction". Through the use of this terminology, individuals are denied the right to reproduce as they wish and the enjoyment of their sexuality for purposes other than reproduction.

6/ Seventy per cent of these cases are brought for theft and robbery, which the experts describe as offences of poverty. Seventy per cent of adults currently imprisoned have previously been committed to juvenile institutions.

7/ According to official data, in the shantytowns the average number of persons per room is 4.8, whereas in the rented rooms of apartment buildings and lodging houses the average is 9.6 persons.

8/ At present, there are reported to be 1,550,000 families who occupy property as illegal tenants.

9/ Of the 15,000 avoidable infant deaths which occur annually in Argentina, 70 per cent are in poor families.

10/ Nevertheless, the Auditor-General has confirmed that in 1993 the Ministry of Health and Social Welfare left 30 per cent of its budget allocation unused on account of alleged inefficiency and poor coordination.

11/ According to a report prepared in 1990 by the Office of the Secretary of State for Health, in Argentina US$ 15 million is lost annually in the treatment of diseases which could be prevented through vaccination campaigns.

12/ These official statistics (Ministry of Health and Social Welfare) show that there have been 4,853 cases of AIDS throughout the country from 1983 to July 1994. It is estimated that by the year 2000, there will be some 30,000 AIDS victims and 300,000 HIV-infected persons.